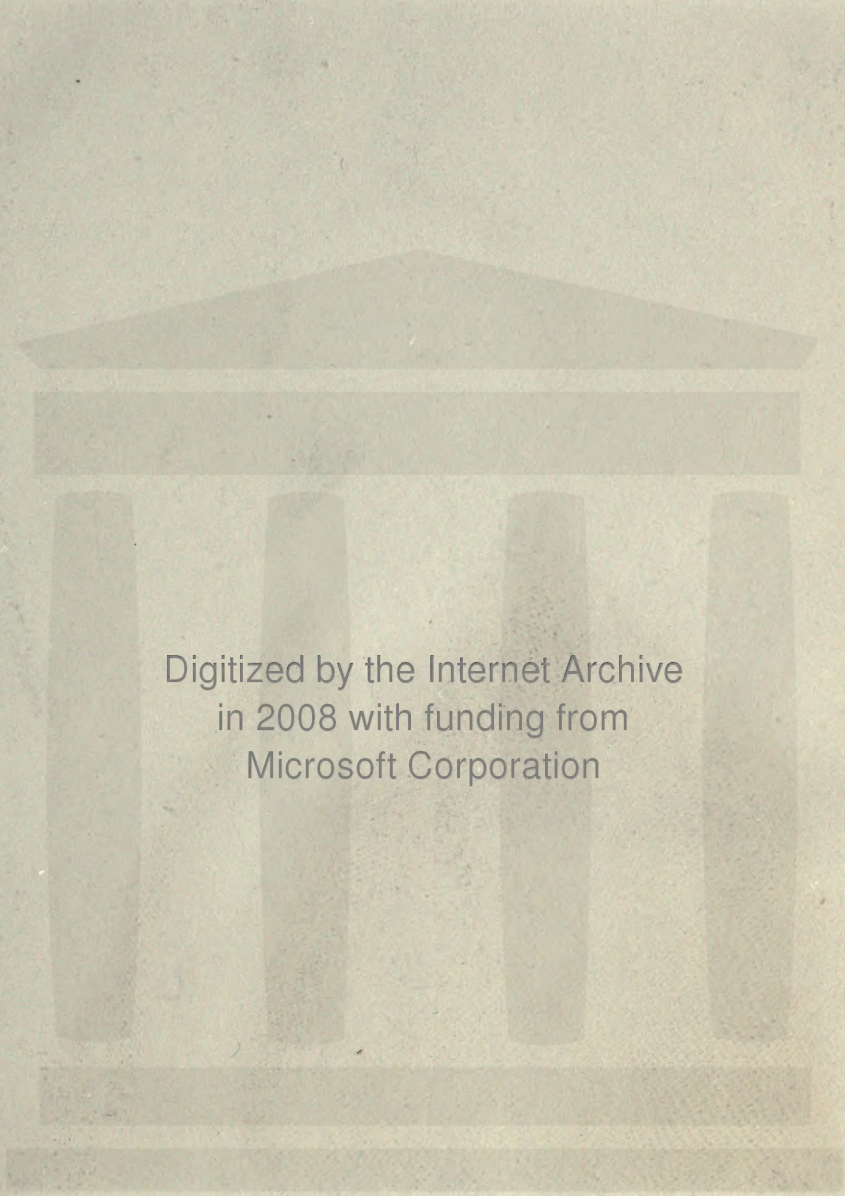
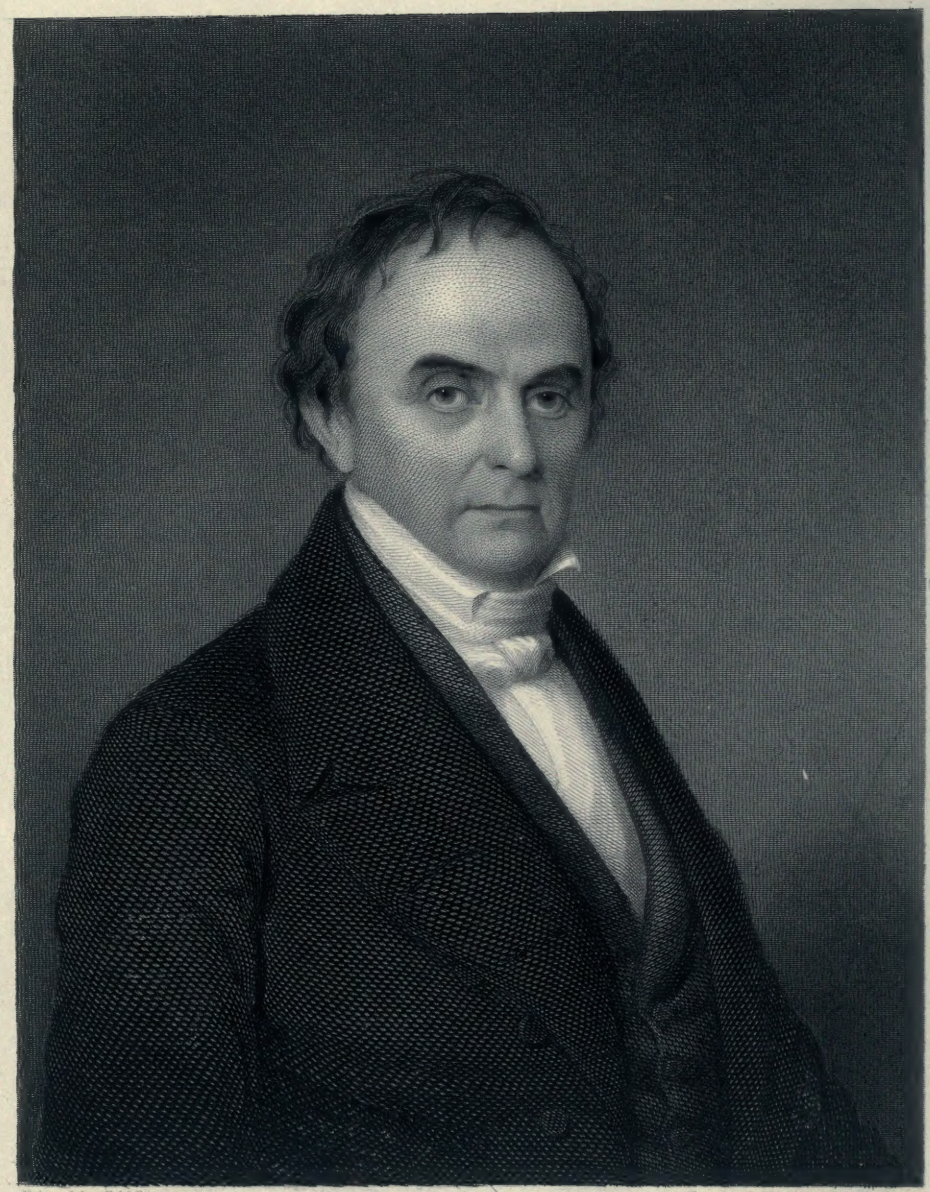
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Daniel Webster

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SPEECHES

AND

FORENSIC ARGUMENTS.

BY DANIEL WEBSTER.

VOL. I.

EIGHTH EDITION.

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23 J-11

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TAPPAN, WHITTEMORE, AND MASON.

1848.

DISTRICT OF MASSACHUSETTS, to wit:

District Clerk's Office.

BE it remembered, that on the twenty-ninth day of November, A. D. 1830, in the fifty-fifth year of the Independence of the UNITED STATES OF AMERICA, *Perkins and Marvin* of the said district, have deposited in this office the title of a book, the right whereof they claim as Proprietors, in the words following, *to wit:*

"Speeches and Forensic Arguments. BY DANIEL WEBSTER."

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JNO. W. DAVIS, *Clerk of the District of Massachusetts.*

PREFACE.

THE present generation of American citizens seems to have a part to act scarcely less remarkable than the preceding. Our immediate ancestors are, indeed, singularly distinguished as the founders of our Free Institutions; but we are ourselves almost as critically, and, for usefulness at least, as fortunately situated. In the view of the sagacious observer, we are objects of as profound and fearful interest as were our Fathers. The ultimate success of our political system depends, perhaps, nearly as much on the first generation that grows up under them, as on that by which they were framed and organized.

It is our part not only to exhibit to the world a practical illustration of the influence of the Federal Constitution, but to define and determine its construction; to apply its provisions to unforeseen exigences, and to cases contemplated by its framers, as they may arise under unexpected circumstances and new modifications; to give, in short, its influence to the public sentiment, on questions of deep and permanent interest; and thus, in all probability, to establish in the community, habits of thinking and of action, which will affect the public concerns as long as the Union shall exist. It is not altogether in paper constitutions, however skilfully devised or precisely expressed, to control the administration; the habits of the

national mind, the course of legislative policy and judicial decision, the *customs* of the government, will in practice more or less affect the received meaning of the Constitution, and so become a part of the public law.

On the public men of this age, therefore, rests a responsibility of no ordinary kind. To the friends of rational liberty and popular happiness they cannot be regarded but as objects of deep and singular interest. Their course is all important to the State. The productions of such of them as incorporate their opinions and spirit, with the national literature and national politics, may be among the richest and best gifts of Providence to the land. The results of great powers and large experience in public affairs, committed to writing in any country and any age, can never be disregarded or neglected; but the lessons of civil and political wisdom, and the tone of social and patriotic feeling, expressed in the works of our own distinguished Statesmen of the present generation, are more emphatically important. They may be regarded strictly "above all price," the most precious and most sacred of the national treasures; as they will probably constitute the nearest approximation to a conservative principle in our political institutions, which our state of society admits.

Of this character, in an eminent degree, the publishers of this volume look upon the works of Mr. WEBSTER; and having obtained his consent to their undertaking, they now present it to the community, in strong confidence that they are doing important service to the country.

Among individuals who have grown into distinction altogether under the existing Federal Government, it is not invidious to say, that few or none are more conspicuous. Endowed by nature with extraordinary powers, he has cultivated them in a

manner and to an extent, most propitious for his own fame, and for the honor and benefit of his country; presenting at once a splendid model of the character developed under our republican institutions, and an illustrious instance of the power of character, thus developed, to preserve and improve those institutions.

To an extent of practice and a degree of success in the profession of the Law, rarely equalled in any age or country; to experience in public affairs as great as his years allow; to singular powers of conception, habits of discrimination, and the faculty of popular reasoning such as renders his eloquence peculiar, and gives it in a great degree a character of its own; to large and liberal views of things; to a surprising familiarity with the great features of our own domestic and foreign policy since the foundation of the government, and with the course of other governments,—to all these traits of Mr. WEBSTER's character and history, we are, by a coincidence as uncommon as it is admirable, permitted to add the most pure and honorable principle, all the domestic and social virtues, containing in themselves the only certain pledges of public good faith and love of country, and consecrating the man to the affections of his age and of posterity.

We look upon it as eminently fortunate, for the country and for mankind, that such a man has not merely left the impress of his mind on the professional and official transactions in which he has been engaged, but has already found occasion to secure a perpetual memorial of many of his opinions upon our history, institutions, and principal objects of legislation and jurisprudence; as well as a monument of his patriotic and humane sentiments, in the literature of his country. Of other individuals of splendid genius, and powerful influence in their day, death has left an impalpable shadow only, with posterity. Mr. WEBSTER, should he

be cut off without another opportunity of exerting his powers for the benefit of the public or his friends, cannot thus pass from the memory of men. He would still be to be seen, in the true features of his character, in those productions of his mind, which are already before the public.

In conclusion we may be permitted to add, that several of the speeches and addresses contained in this volume, possessing a character of more permanent and general interest, have been translated and published in most of the languages of Europe. And we are not without authority for saying, that they have been regarded, by men of enlightened judgments and cultivated taste, as fine examples of forensic and popular eloquence. In the language of one of the most eminent statesmen of England, some of these speeches have been read in that country, with "no less admiration of their eloquence, than satisfaction in the soundness and ability of their general views." This tribute, coming as it does from those who are not apt to over-estimate the intellectual power or literary taste of our country, may be regarded by us, with an honest pride, as evidence of uncommor merit. As such, we offer this volume of Mr. WEBSTER'S speeches to our countrymen, in full confidence that they will sustain the high reputation they have acquired for political wisdom and true eloquence.

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DISCOURSE

DELIVERED AT PLYMOUTH, IN COMMEMORATION OF THE FIRST SETTLEMENT OF NEW ENGLAND. DEC. 22, 1820.

Let us rejoice that we behold this day. Let us be thankful that we have lived to see the bright and happy breaking of the auspicious morn, which commences the third century of the history of New England. Auspicious indeed; bringing a happiness beyond the common allotment of Providence to men; full of present joy, and gilding with bright beams the prospect of futurity, is the dawn that awakens us to the commemoration of the landing of the Pilgrims.

Living at an epoch which naturally marks the progress of the history of our native land, we have come hither to celebrate the great event with which that history commenced. Forever honored be this, the place of our fathers' refuge! Forever remembered the day which saw them, weary and distressed, broken in everything but spirit, poor in all but faith and courage, at last secure from the dangers of wintry seas, and impressing this shore with the first footsteps of civilized man!

It is a noble faculty of our nature which enables us to connect our thoughts, our sympathies, and our happiness, with what is distant, in place or time; and, looking before and after, to hold communion at once with our ancestors and our posterity. Human and mortal although we are, we are nevertheless not mere insulated beings, without relation to the past or the future. Neither the point of time, nor the spot of earth, in which we physically live, bounds our rational and intellectual enjoyments. We live in the past by a knowledge of its history; and in the future by hope and anticipation. By ascending to an association with our ancestors; by contemplating their example and studying their character; by partaking their sentiments, and imbibing their spirit; by accompanying them in their toils, by sympathizing in their sufferings, and rejoicing in their successes and their triumphs, we mingle our own existence with theirs, and seem to belong to their age. We become their contemporaries, live the lives which they lived, endure what they endured, and partake in the rewards which they enjoyed. And in like manner, by running along the line of future time, by contemplating the probable fortunes of those who are coming after us; by attempt-

ing something which may promote their happiness, and leave some not dishonorable memorial of ourselves for their regard, when we shall sleep with the fathers, we protract our own earthly being, and seem to crowd whatever is future, as well as all that is past, into the narrow compass of our earthly existence. As it is not a vain and false, but an exalted and religious imagination, which leads us to raise our thoughts from the orb, which, amidst this universe of worlds, the Creator has given us to inhabit, and to send them with something of the feeling which nature prompts, and teaches to be proper among children of the same Eternal Parent, to the contemplation of the myriads of fellow beings, with which his goodness has peopled the infinite of space;—so neither is it false or vain to consider ourselves as interested and connected with our whole race, through all time; allied to our ancestors; allied to our posterity; closely compacted on all sides with others; ourselves being but links in the great chain of being, which begins with the origin of our race, runs onward through its successive generations, binding together the past, the present, and the future, and terminating at last, with the consummation of all things earthly, at the throne of God.

There may be, and there often is, indeed, a regard for ancestry, which nourishes only a weak pride; as there is also a care for posterity, which only disguises an habitual avarice, or hides the workings of a low and groveling vanity. But there is also a moral and philosophical respect for our ancestors, which elevates the character and improves the heart. Next to the sense of religious duty and moral feeling, I hardly know what should bear with stronger obligation on a liberal and enlightened mind, than a consciousness of alliance with excellence which is departed; and a consciousness, too, that in its acts and conduct, and even in its sentiments and thoughts, it may be actively operating on the happiness of those who come after it. Poetry is found to have few stronger conceptions, by which it would affect or overwhelm the mind, than those in which it presents the moving and speaking image of the departed dead to the senses of the living. This belongs to poetry, only because it is congenial to our nature. Poetry is, in this respect, but the handmaid of true philosophy and morality; it deals with us as human beings, naturally reverencing those whose visible connexion with this state of existence is severed, and who may yet exercise we know not what sympathy with ourselves;—and when it carries us forward, also, and shows us the long continued result of all the good we do, in the prosperity of those who follow us, till it bears us from ourselves, and absorbs us in an intense interest for what shall happen to the generations after us, it speaks only in the language of our nature, and affects us with sentiments which belong to us as human beings.

Standing in this relation to our ancestors and our posterity, we are assembled on this memorable spot, to perform the duties which that relation, and the present occasion, impose upon us. We have come to this Rock, to record here our homage for our Pilgrim Fathers; our sympathy in their sufferings; our gratitude for their labors; our admiration of their virtues; our veneration for their

piety; and our attachment to those principles of civil and religious liberty, which they encountered the dangers of the ocean, the storms of heaven, the violence of savages, disease, exile, and famine, to enjoy and to establish.—And we would leave here, also, for the generations which are rising up rapidly to fill our places, some proof, that we have endeavoured to transmit the great inheritance unimpaired; that in our estimate of public principles, and private virtue; in our veneration of religion and piety; in our devotion to civil and religious liberty; in our regard to whatever advances human knowledge, or improves human happiness, we are not altogether unworthy of our origin.

There is a local feeling, connected with this occasion, too strong to be resisted; a sort of *genius of the place*, which inspires and awes us. We feel that we are on the spot, where the first scene of our history was laid; where the hearths and altars of New England were first placed; where Christianity, and civilisation, and letters made their first lodgement, in a vast extent of country, covered with a wilderness, and peopled by roving barbarians. We are here, at the season of the year at which the event took place. The imagination irresistibly and rapidly draws around us the principal features, and the leading characters in the original scene. We cast our eyes abroad on the ocean, and we see where the little bark, with the interesting group upon its deck, made its slow progress to the shore. We look around us, and behold the hills and promontories, where the anxious eyes of our fathers first saw the places of habitation and of rest. We feel the cold which benumbed, and listen to the winds which pierced them. Beneath us is the Rock, on which New England received the feet of the Pilgrims. We seem even to behold them, as they struggle with the elements, and, with toilsome efforts, gain the shore. We listen to the chiefs in council; we see the unexampled exhibition of female fortitude and resignation; we hear the whisperings of youthful impatience, and we see, what a painter of our own has also represented by his pencil, chilled and shivering childhood, houseless, but for a mother's arms, couchless but for a mother's breast, till our own blood almost freezes. The mild dignity of Carver and of Bradford; the decisive and soldierlike air and manner of Standish; the devout Brewster; the enterprising Allerton; the general firmness and thoughtfulness of the whole band; their conscious joy for dangers escaped; their deep solicitude about dangers to come; their trust in Heaven; their high religious faith, full of confidence and anticipation:—all of these seem to belong to this place, and to be present upon this occasion, to fill us with reverence and admiration.

The settlement of New England by the colony which landed here on the twenty-second of December, sixteen hundred and twenty, although not the first European establishment in what now constitutes the United States, was yet so peculiar in its causes and character, and has been followed and must still be followed, by such consequences, as to give it a high claim to lasting commemoration. On these causes and consequences, more than on its immediately attendant circumstances, its importance as an historical event depends. Great actions and striking occurrences, having excited a temporary

admiration, often pass away and are forgotten, because they leave no lasting results, affecting the prosperity and happiness of communities. Such is frequently the fortune of the most brilliant military achievements. Of the ten thousand battles which have been fought; of all the fields fertilized with carnage; of the banners which have been bathed in blood; of the warriors who have hoped that they had risen from the field of conquest to a glory as bright and as durable as the stars, how few that continue long to interest mankind! The victory of yesterday is reversed by the defeat of to-day; the star of military glory, rising like a meteor, like a meteor has fallen; disgrace and disaster hang on the heels of conquest and renown; victor and vanquished presently pass away to oblivion, and the world goes on in its course, with the loss only of so many lives and so much treasure.

But if this be frequently, or generally, the fortune of military achievements, it is not always so. There are enterprises, military as well as civil, which sometimes check the current of events, give a new turn to human affairs, and transmit their consequences through ages. We see their importance in their results, and call them great, because great things follow. There have been battles which have fixed the fate of nations. These come down to us in history with a solid and permanent interest, not created by a display of glittering armor, the rush of adverse battalions, the sinking and rising of pennons, the flight, the pursuit, and the victory; but by their effect in advancing or retarding human knowledge, in overthrowing or establishing despotism, in extending or destroying human happiness. When the traveller pauses on the plain of Marathon, what are the emotions which most strongly agitate his breast? What is that glorious recollection, which thrills through his frame, and suffuses his eyes?—Not, I imagine, that Grecian skill and Grecian valor were here most signally displayed; but that Greece herself was here saved. It is, because to this spot, and to the event which has rendered it immortal, he refers all the succeeding glories of the republic. It is because if that day had gone otherwise, Greece had perished. It is because he perceives that her philosophers, and orators, her poets and painters, her sculptors and architects, her governments and free institutions, point backward to Marathon, and that their fu ture existence seems to have been suspended on the contingency, whether the Persian or the Grecian banner should wave victorious in the beams of that day's setting sun. And as his imagination kindles at the retrospect, he is transported back to the interesting moment, he counts the fearful odds of the contending hosts, his interest for the result overwhelms him; he trembles, as if it were still uncertain, and seems to doubt, whether he may consider Socrates and Plato, Demosthenes, Sophocles and Phidias, as secure, yet, to himself and to the world.

"If we conquer," said the Athenian commander on the morning of that decisive day,—"If we conquer, we shall make Athens the greatest city of Greece." A prophecy, how well fulfilled!—"If God prosper us," might have been the more appropriate language of our Fathers, when they landed upon this Rock;—"if God prosper us, we shall here begin a work which shall last for ages; we

shall plant here a new society, in the principles of the fullest liberty, and the purest religion: we shall subdue this wilderness which is before us; we shall fill this region of the great continent, which stretches almost from pole to pole, with civilisation and Christianity; the temples of the true God shall rise, where now ascends the smoke of idolatrous sacrifice; fields and gardens, the flowers of summer, and the waving and golden harvest of autumn, shall extend over a thousand hills, and stretch along a thousand valleys, never yet, since the creation, reclaimed to the use of civilized man. We shall whiten this coast with the canvass of a prosperous commerce; we shall stud the long and winding shore with an hundred cities. That which we sow in weakness shall be raised in strength. From our sincere but houseless worship, there shall spring splendid temples to record God's goodness; from the simplicity of our social union, there shall arise wise and politic constitutions of government, full of the liberty which we ourselves bring and breathe; from our zeal for learning, institutions shall spring which shall scatter the light of knowledge throughout the land, and, in time, paying back where they have borrowed, shall contribute their part to the great aggregate of human knowledge; and our descendants, through all generations, shall look back to this spot, and to this hour, with unabated affection and regard."

A brief remembrance of the causes which led to the settlement of this place; some account of the peculiarities and characteristic qualities of that settlement, as distinguished from other instances of colonization; a short notice of the progress of New England in the great interests of society, during the century which is now elapsed; with a few observations on the principles upon which society and government are established in this country;—comprise all that can be attempted, and much more than can be satisfactorily performed on the present occasion.

Of the motives which influenced the first settlers to a voluntary exile, induced them to relinquish their native country, and to seek an asylum in this then unexplored wilderness, the first and principal, no doubt were connected with Religion. They sought to enjoy a higher degree of religious freedom, and what they esteemed a purer form of religious worship, than was allowed to their choice, or presented to their imitation, in the old world. The love of religious liberty is a stronger sentiment, when fully excited, than an attachment to civil or political freedom. That freedom which the conscience demands, and which men feel bound by their hopes of salvation to contend for, can hardly fail to be attained. Conscience, in the cause of Religion, and the worship of the Deity, prepares the mind to act, and to suffer beyond almost all other causes. It sometimes gives an impulse so irresistible, that no fetters of power or of opinion can withstand it. History instructs us that this love of religious liberty, a compound sentiment in the breast of man, made up of the clearest sense of right, and the highest conviction of duty, is able to look the sternest despotism in the face, and with means apparently most inadequate, to shake principalities and powers. There is a boldness, a spirit of daring, in religious reformers, not to be measured by the general rules which control men's purposes and actions. If the

hand of power be laid upon it, this only seems to augment its force and its elasticity, and to cause its action to be more formidable and terrible. Human invention has devised nothing, human power has compassed nothing that can forcibly restrain it, when it breaks forth Nothing can stop it, but to give way to it; nothing can check it, but indulgence. It loses its power only when it has gained its object. The principle of toleration, to which the world has come so slowly, is at once the most just and the most wise of all principles. Even when religious feeling takes a character of extravagance and enthusiasm, and seems to threaten the order of society, and shake the columns of the social edifice, its principal danger is in its restraint. If it be allowed indulgence and expansion like the elemental fires it only agitates and perhaps purifies the atmosphere, while its efforts to throw off restraint would burst the world asunder.

It is certain, that although many of them were Republicans in principle, we have no evidence that our New England ancestors would have emigrated, as they did, from their own native country, become wanderers in Europe, and finally undertaken the establishment of a colony here, merely from their dislike of the political systems of Europe. They fled not so much from the civil government, as from the Hierarchy, and the laws which enforced conformity to the Church Establishment. Mr. Robinson had left England as early as sixteen hundred and eight, on account of the persecutions for nonconformity, and had retired to Holland. He left England, from no disappointed ambition in affairs of state, from no regrets at the want of preferment in the church, nor from any motive of distinction, or of gain. Uniformity in matters of religion was pressed with such extreme rigor, that a voluntary exile seemed the most eligible mode of escaping from the penalties of noncompliance. The accession of Elizabeth had, it is true, quenched the fires of Smithfield, and put an end to the easy acquisition of the crown of martyrdom. Her long reign had established the Reformation, but toleration was a virtue beyond her conception, and beyond the age. She left no example of it to her successor; and he was not of a character which rendered it probable that a sentiment either so wise or so liberal should originate with him. At the present period it seems incredible, that the learned, accomplished, unassuming, and inoffensive Robinson should neither be tolerated in his own peaceable mode of worship in his own country, nor suffered quietly to depart from it. Yet such was the fact. He left his country by stealth, that he might elsewhere enjoy those rights which ought to belong to men in all countries. The embarkation of the Pilgrims for Holland is deeply interesting, from its circumstances, and also as it marks the character of the times, independently of its connexion with names now incorporated with the history of Empire. The embarkation was intended to be in the night, that it might escape the notice of the officers of government. Great pains had been taken to secure boats, which should come undiscovered to the shore, and receive the fugitives; and frequent disappointments had been experienced in this respect. At length the appointed time came, bringing with it unusual severity of cold and rain. An unfrequented and barren heath, on the shores of Lincolnshire, was the selected

spot, where the feet of the Pilgrims were to tread, for the last time, the land of their fathers.

The vessel which was to receive them, did not come until the next day, and in the meantime the little band was collected, and men and women and children and baggage were crowded together, in melancholy and distressed confusion. The sea was rough, and the women and children already sick, from their passage down the river to the place of embarkation. At length the wished for boat silently and fearfully approaches the shore, and men and women and children, shaking with fear and with cold, as many as the small vessel could bear, venture off on a dangerous sea. Immediately the advance of horses is heard from behind, armed men appear, and those not yet embarked are seized, and taken into custody. In the hurry of the moment, there had been no regard to the keeping together of families, in the first embarkation, and on account of the appearance of the horsemen, the boat never returned for the residue. Those who had got away, and those who had not, were in equal distress. A storm, of great violence, and long duration, arose at sea, which not only protracted the voyage, rendered distressing by the want of all those accommodations which the interruption of the embarkation had occasioned, but also forced the vessel out of her course, and menaced immediate shipwreck; while those on shore, when they were dismissed from the custody of the officers of justice, having no longer homes or houses to retire to, and their friends and protectors being already gone, became objects of necessary charity, as well as of deep commiseration.

As this scene passes before us, we can hardly forbear asking, whether this be a band of malefactors and felons flying from justice? What are their crimes, that they hide themselves in darkness?—To what punishment are they exposed, that to avoid it, men, and women, and children, thus encounter the surf of the North Sea, and the terrors of a night storm? What induces this armed pursuit, and this arrest of fugitives, of all ages and both sexes?—Truth does not allow us to answer these inquiries, in a manner that does credit to the wisdom or the justice of the times. This was not the flight of guilt, but of virtue. It was an humble and peaceable religion, flying from causeless oppression. It was conscience, attempting to escape from the arbitrary rule of the Stuarts. It was Robinson, and Brewster, leading off their little band from their native soil, at first to find shelter on the shores of the neighbouring continent, but ultimately to come hither; and having surmounted all difficulties, and braved a thousand dangers, to find here a place of refuge and of rest. Thanks be to God, that this spot was honored as the asylum of religious liberty. May its standard, reared here, remain forever!—May it rise up as high as heaven, till its banner shall fan the air of both continents, and wave as a glorious ensign of peace and security to the nations!

The peculiar character, condition, and circumstances of the colonies which introduced civilisation and an English race into New England, afford a most interesting and extensive topic of discussion. On these much of our subsequent character and fortune has depended. Their influence has essentially affected our whole his-

tory, through the two centuries which have elapsed; and as they have become intimately connected with government, laws, and property, as well as with our opinions on the subjects of religion and civil liberty, that influence is likely to continue to be felt through the centuries which shall succeed. Emigration from one region to another, and the emission of colonies to people countries more or less distant from the residence of the parent stock, are common incidents in the history of mankind; but it has not often, perhaps never happened, that the establishment of colonies should be attempted, under circumstances, however beset with present difficulties and dangers, yet so favorable to ultimate success, and so conducive to magnificent results, as those which attended the first settlements on this part of the continent. In other instances, emigration has proceeded from a less exalted purpose, in a period of less general intelligence, or more without plan and by accident; or under circumstances, physical and moral, less favorable to the expectation of laying a foundation for great public prosperity and future empire.

A great resemblance exists, obviously, between all the English colonies, established within the present limits of the United States; but the occasion attracts our attention more immediately to those which took possession of New England, and the peculiarities of these furnish a strong contrast with most other instances of colonization.

Among the ancient nations, the Greeks, no doubt, sent forth from their territories the greatest number of colonies. So numerous indeed were they, and so great the extent of space over which they were spread, that the parent country fondly and naturally persuaded herself, that by means of them she had laid a sure foundation for the universal civilisation of the world. These establishments, from obvious causes, were most numerous in places most contiguous; yet they were found on the coasts of France, on the shores of the Euxine Sea, in Africa, and even, as is alleged, on the borders of India. These emigrations appear to have been sometimes voluntary and sometimes compulsory; arising from the spontaneous enterprise of individuals, or the order and regulation of government. It was a common opinion with ancient writers, that they were undertaken in religious obedience to the commands of oracles; and it is probable that impressions of this sort might have had more or less influence; but it is probable, also, that on these occasions the oracles did not speak a language dissonant from the views and purposes of the state.

Political science among the Greeks seems never to have extended to the comprehension of a system, which should be adequate to the government of a great nation upon principles of liberty. They were accustomed only to the contemplation of small republics, and were led to consider an augmented population as incompatible with free institutions. The desire of a remedy for this supposed evil, and the wish to establish marts for trade, led the governments often to undertake the establishment of colonies as an affair of state expediency. Colonization and commerce, indeed, would naturally become objects of interest to an ingenious and enterprising people, inhabiting a territory closely circumscribed in its limits, and in no small

part mountainous and sterile; while the islands of the adjacent seas, and the promontories and coasts of the neighbouring continents, by their mere proximity, strongly solicited the excited spirit of emigration. Such was this proximity, in many instances, that the new settlements appeared rather to be the mere extension of population over contiguous territory, than the establishment of distant colonies. In proportion as they were near to the parent state, they would be under its authority, and partake of its fortunes. The colony at Marseilles might perceive lightly, or not at all, the sway of Phocis; while the islands in the Egean Sea could hardly attain to independence of their Athenian origin. Many of these establishments took place at an early age; and if there were defects in the governments of the parent states, the colonists did not possess philosophy or experience sufficient to correct such evils in their own institutions, even if they had not been, by other causes, deprived of the power. An immediate necessity, connected with the support of life, was the main and direct inducement to these undertakings, and there could hardly exist more than the hope of a successful imitation of institutions with which they were already acquainted, and of holding an equality with their neighbours, in the course of improvement. The laws and customs, both political and municipal, as well as the religious worship of the parent city, were transferred to the colony; and the parent city herself, with all such of her colonies as were not too far remote for frequent intercourse, and common sentiments, would appear like a family of cities, more or less dependent, and more or less connected. We know how imperfect this system was, as a system of general politics, and what scope it gave to those mutual dissentions and conflicts which proved so fatal to Greece.

But it is more pertinent to our present purpose to observe, that nothing existed in the character of Grecian emigrations, or in the spirit and intelligence of the emigrants, likely to give a new and important direction to human affairs, or a new impulse to the human mind. Their motives were not high enough, their views were not sufficiently large and prospective. They went not forth, like our ancestors, to erect systems of more perfect civil liberty, or to enjoy a higher degree of religious freedom. Above all, there was nothing in the religion and learning of the age, that could either inspire high purposes, or give the ability to execute them. Whatever restraints on civil liberty, or whatever abuses in religious worship, existed at the time of our fathers' emigration, yet, even then, all was light in the moral and mental world, in comparison with its condition in most periods of the ancient states. The settlement of a new continent, in an age of progressive knowledge and improvement, could not but do more than merely enlarge the natural boundaries of the habitable world. It could not but do much more even than extend commerce and increase wealth among the human race. We see how this event has acted, how it must have acted, and wonder only why it did not act sooner, in the production of moral effects, on the state of human knowledge, the general tone of human sentiments, and the prospects of human happiness. It gave to civilized man not only a new continent to be inhabited and cultivated, and new seas to be explored;

but it gave him also a new range for his thoughts, new objects for curiosity, and new excitements to knowledge and improvement.

Roman colonization resembled, far less than that of the Greeks, the original settlements of this country. Power and dominion were the objects of Rome, even in her colonial establishments. Her whole exterior aspect was for centuries hostile and terrific. She grasped at dominion, from India to Britain, and her measures of colonization partook of the character of her general system. Her policy was military, because her objects were power, ascendency and subjugation. Detachments of emigrants from Rome incorporated themselves with, and governed, the original inhabitants of conquered countries. She sent citizens where she had first sent soldiers; her law followed her sword. Her colonies were a sort of military establishment; so many advanced posts in the career of her dominion. A governor from Rome ruled the new colony with absolute sway, and often with unbounded rapacity. In Sicily, in Gaul, in Spain, and in Asia, the power of Rome prevailed, not nominally only, but really and effectually. Those who immediately exercised it were Roman; the tone and tendency of its administration, Roman. Rome herself continued to be the heart and centre of the great system which she had established. Extortion and rapacity, finding a wide and often rich field of action in the provinces, looked nevertheless to the banks of the Tiber, as the scene in which their illgotten treasures should be displayed; or if a spirit of more honest acquisition prevailed, the object, nevertheless, was ultimate enjoyment in Rome itself. If our own history, and our own times did not sufficiently expose the inherent and incurable evils of provincial government, we might see them portrayed, to our amazement, in the desolated and ruined provinces of the Roman empire. We might hear them, in a voice that terrifies us, in those strains of complaint and accusation, which the advocates of the provinces poured forth in the Roman Forum.—"*Quas res luxuries in flagitiis, crudelitas in suppliciis, avaritia in rapinis, superbia in contumeliis, efficere potuisset, eas omneis sese pertulisse.*"

As was to be expected, the Roman Provinces partook of the fortunes as well as of the sentiments and general character of the seat of empire. They lived together with her, they flourished with her, and fell with her. The branches were lopped away even before the vast and venerable trunk itself fell prostrate to the earth. Nothing had proceeded from her, which could support itself, and bear up the name of its origin, when her own sustaining arm should be enfeebled or withdrawn. It was not given to Rome to see, either at her zenith, or in her decline, a child of her own, distant indeed, and independent of her control, yet speaking her language and inheriting her blood, springing forward to a competition with her own power, and a comparison with her own great renown. She saw not a vast region of the earth, peopled from her stock, full of states and political communities, improving upon the models of her institutions, and breathing in fuller measure the spirit which she had breathed in the best periods of her existence; enjoying and extending her arts and her literature; rising rapidly from political childhood to manly strength and independence; her offspring, yet now her equal; unconnected with the causes which might affect the duration of her own power and greatness; of

common origin, but not linked to a common fate; giving ample pledge, that her name should not be forgotten, that her language should not cease to be used among men; that whatsoever she had done for human knowledge and human happiness, should be treasured up and preserved; that the record of her existence, and her achievements, should not be obscured, although, in the inscrutable purposes of Providence, it might be her destiny to fall from opulence and splendor; although the time might come, when darkness should settle on all her hills; when foreign or domestic violence should overturn her altars and her temples; when ignorance and despotism should fill the places where Laws, and Arts, and Liberty had flourished; when the feet of barbarism should trample on the tombs of her consuls, and the walls of her senate house and forum echo only to the voice of savage triumph. She saw not this glorious vision, to inspire and fortify her against the possible decay or downfall of her power. Happy are they, who in our day may behold it, if they shall contemplate it with the sentiments which it ought to inspire!

The New England colonies differ quite as widely from the Asiatic establishments of the modern European nations, as from the models of the Ancient States. The sole object of those establishments was originally trade; although we have seen, in one of them, the anomaly of a mere trading company attaining a political character, disbursing revenues, and maintaining armies and fortresses, until it has extended its control over seventy millions of people. Differing from these, and still differing more from the New England and North American Colonies, are the European settlements in the West India Islands. It is not strange, that when men's minds were turned to the settlement of America, different objects should be proposed by those who emigrated to the different regions of so vast a country. Climate, soil, and condition were not all equally favorable to all pursuits. In the West Indies, the purpose of those who went thither, was to engage in that species of agriculture, suited to the soil and climate, which seems to bear more resemblance to commerce, than to the hard and plain tillage of New England. The great staples of these countries, being partly an agricultural and partly a manufactured product, and not being of the necessaries of life, become the object of calculation, with respect to a profitable investment of capital, like any other enterprise of trade or manufacture. The more especially, as they require, by necessity or habit, slave labor for their production, the capital necessary to carry on the work of this production is more considerable. The West Indies are resorted to, therefore, rather for the investment of capital, than for the purpose of sustaining life by personal labor. Such as possess a considerable amount of capital, or such as choose to adventure in commercial speculations without capital, can alone be fitted to be emigrants to the islands. The agriculture of these regions, as before observed, is a sort of commerce; and it is a species of employment, in which labor seems to form an inconsiderable ingredient in the productive causes; since the portion of white labor is exceedingly small, and slave labor is rather more like profit on stock or capital, than *labor* properly so called. The individual who contemplates an establishment of this kind, takes into the account the cost

of the necessary number of slaves, in the same manner as he calculates the cost of the land. The uncertainty, too, of this species of employment, affords another ground of resemblance to commerce. Although gainful, on the whole, and in a series of years, it is often very disastrous for a single year, and as the capital is not readily invested in other pursuits, bad crops, or bad markets, not only affect the profits, but the capital itself. Hence the sudden depressions which take place in the value of such estates.

But the great and leading observation, relative to these establishments, remains to be made. It is, that the owners of the soil and of the capital seldom consider themselves *at home* in the colony. A very great portion of the soil itself is usually owned in the mother country; a still greater is mortgaged for capital obtained there; and, in general, those who are to derive an interest from the products, look to the parent country as the place for enjoyment of their wealth. The population is therefore constantly fluctuating. Nobody comes but to return. A constant succession of owners, agents, and factors takes place. Whatsoever the soil, forced by the unmitigated toil of slavery, can yield, is borne home to defray rents, and interest, and agencies; or to give the means of living in a better society. In such a state, it is evident that no spirit of permanent improvement is likely to spring up. Profits will not be invested with a distant view of benefiting posterity. Roads and canals will hardly be built; schools will not be founded; colleges will not be endowed. There will be few fixtures in society; no principles of utility or of elegance, planted now, with the hope of being developed and expanded hereafter. Profit, immediate profit, must be the principal active spring in the social system. There may be many particular exceptions to these general remarks, but the outline of the whole, is such as is here drawn.

Another most important consequence of such a state of things is, that no idea of independence of the parent country is likely to arise; unless indeed it should spring up in a form, that would threaten universal desolation. The inhabitants have no strong attachment to the place which they inhabit. The hope of a great portion of them, is to leave it; and their great desire, to leave it soon. However useful they may be to the parent state, how much soever they may add to the conveniencies and luxuries of life, these colonies are not favored spots for the expansion of the human mind, for the progress of permanent improvement, or for sowing the seeds of future independent empire.

Different, indeed, most widely different, from all these instances of emigration and plantation, were the condition, the purposes, and the prospects of our Fathers, when they established their infant colony upon this spot. They came hither to a land from which they were never to return. Hither they had brought, and here they were to fix, their hopes, their attachments, and their objects. Some natural tears they shed, as they left the pleasant abodes of their fathers, and some emotions they suppressed, when the white cliffs of their native country, now seen for the last time, grew dim to their sight. They were acting however upon a resolution not to be changed. With whatever stifled regrets, with whatever occasional hesita-

tion, with whatever appalling apprehensions, which might sometimes arise with force to shake the firmest purpose, they had yet committed themselves to Heaven, and the elements; and a thousand leagues of water soon interposed to separate them forever from the region which gave them birth. A new existence awaited them here; and when they saw these shores, rough, cold, barbarous, and barren as then they were, they beheld their country. That mixed and strong feeling, which we call love of country, and which is, in general, never extinguished in the heart of man, grasped and embraced its proper object here. Whatever constitutes *country*, except the earth and the sun, all the moral causes of affection and attachment, which operate upon the heart, they had brought with them to their new abode. Here were now their families and friends; their homes, and their property. Before they reached the shore, they had established the elements of a social system, and at a much earlier period had settled their forms of religious worship. At the moment of their landing, therefore, they possessed institutions of government, and institutions of religion: and friends and families, and social and religious institutions, established by consent, founded on choice and preference, how nearly do these fill up our whole idea of country!—The morning that beamed on the first night of their repose, saw the Pilgrims already established in their country. There were political institutions, and civil liberty, and religious worship. Poetry has fancied nothing, in the wanderings of heroes, so distinct and characteristic. Here was man, indeed, unprotected, and unprovided for, on the shore of a rude and fearful wilderness; but it was politic, intelligent and educated man. Everything was civilized but the physical world. Institutions containing in substance all that ages had done for human government, were established in a forest. Cultivated mind was to act on uncultivated nature; and, more than all, a government, and a country, were to commence, with the very first foundations laid under the divine light of the christian religion. Happy auspices of a happy futurity! Who would wish that his country's existence had otherwise begun?—Who would desire the power of going back to the ages of fable? Who would wish for an origin, obscured in the darkness of antiquity?—Who would wish for other emblazoning of his country's heraldry, or other ornaments of her genealogy, than to be able to say, that her first existence was with intelligence; her first breath the inspirations of liberty; her first principle the truth of divine religion?

Local attachments and sympathies would ere long spring up in the breasts of our ancestors, endearing to them the place of their refuge. Whatever natural objects are associated with interesting scenes and high efforts, obtain a hold on human feeling, and demand from the heart a sort of recognition and regard. This Rock soon became hallowed in the esteem of the Pilgrims, and these hills grateful to their sight. Neither they nor their children were again to till the soil of England, nor again to traverse the seas which surrounded her. But here was a new sea, now open to their enterprise, and a new soil, which had not failed to respond gratefully to their laborious industry, and which was already assuming a robe of verdure. Hardly had they provided shelter for the living, ere they were sum-

moned to erect sepulchres for the dead. The ground had become sacred, by enclosing the remains of some of their companions and connexions. A parent, a child, a husband or a wife, had gone the way of all flesh, and mingled with the dust of New England. We naturally look with strong emotions to the spot, though it be a wilderness, where the ashes of those we have loved repose. Where the heart has laid down what it loved most, it is desirous of laying itself down. No sculptured marble, no enduring monument, no honorable inscription, no ever burning taper that would drive away the darkness of death, can soften our sense of the reality of mortality, and hallow to our feelings the ground which is to cover us, like the consciousness that we shall sleep, dust to dust, with the objects of our affections.

In a short time other causes sprung up to bind the Pilgrims with new cords to their chosen land. Children were born, and the hopes of future generations arose, in the spot of their new habitation. The second generation found this the land of their nativity, and saw that they were bound to its fortunes. They beheld their fathers' graves around them, and while they read the memorials of their toils and labors, they rejoiced in the inheritance which they found bequeathed to them.

Under the influence of these causes, it was to be expected, that an interest and a feeling should arise here, entirely different from the interest and feeling of mere Englishmen; and all the subsequent history of the colonies proves this to have actually and gradually taken place. With a general acknowledgement of the supremacy of the British crown, there was, from the first, a repugnance to an entire submission to the control of British legislation. The colonies stood upon their charters, which as they contended, exempted them from the ordinary power of the British parliament, and authorised them to conduct their own concerns by their own counsels. They utterly resisted the notion that they were to be ruled by the mere authority of the government at home, and would not endure even that their own charter governments should be established on the other side of the Atlantic. It was not a controlling or protecting board in England, but a government of their own, and existing immediately within their limits, which could satisfy their wishes. It was easy to foresee, what we know also to have happened, that the first great cause of collision and jealousy would be, under the notion of political economy then and still prevalent in Europe, an attempt on the part of the mother country to monopolize the trade of the colonies. Whoever has looked deeply into the causes which produced our revolution, has found, if I mistake not, the original principle far back in this claim, on the part of England, to monopolize our trade, and a continued effort on the part of the colonies to resist or evade that monopoly; if indeed it be not still more just and philosophical to go farther back, and to consider it decided, that an independent government must arise here, the moment it was ascertained that an English colony, such as landed in this place, could sustain itself against the dangers which surrounded it, and, with other similar establishments, overspread the land with an English population. Accidental causes retarded at times, and at times accelerated the

progress of the controversy. The colonies wanted strength, and time gave it to them. They required measures of strong and palpable injustice, on the part of the mother country, to justify resistance; the early part of the late king's reign furnished them. They needed spirits of high order, of great daring, of long foresight and of commanding power, to seize the favoring occasion to strike a blow, which should sever, forever, the tie of colonial dependence; and these spirits were found, in all the extent which that or any crisis could demand, in Otis, Adams, Hancock, and the other immediate authors of our independence. Still it is true, that for a century, causes had been in operation tending to prepare things for this great result. In the year 1660 the English act of Navigation was passed; the first and grand object of which seems to have been to secure to England the whole trade with her plantations. It was provided, by that act, that none but English ships should transport American produce over the ocean; and that the principal articles of that produce should be allowed to be sold only in the markets of the mother country. Three years afterwards another law was passed, which enacted, that such commodities as the colonies might wish to purchase, should be bought only in the markets of the mother country. Severe rules were prescribed to enforce the provisions of these laws, and heavy penalties imposed on all who should violate them. In the subsequent years of the same reign, other statutes were passed to reenforce these statutes, and other rules prescribed, to secure a compliance with these rules. In this manner was the trade, to and from the colonies, tied up, almost to the exclusive advantage of the parent country. But laws, which rendered the interest of a whole people subordinate to that of another people, were not likely to execute themselves; nor was it easy to find many on the spot, who could be depended upon for carrying them into execution. In fact, these laws were more or less evaded, or resisted, in all the colonies. To enforce them was the constant endeavour of the government at home; to prevent or elude their operation, the perpetual object here. "The laws of navigation," says a living British writer, "were nowhere so openly disobeyed and contemned as in New England." "The people of Massachusetts Bay," he adds, "were from the first disposed to act as if independent of the mother country, and having a governor and magistrates of their own choice, it was difficult to enforce any regulation which came from the English parliament, adverse to their interests." To provide more effectually for the execution of these laws, we know that courts of admiralty were afterwards established by the crown, with power to try revenue causes, as questions of admiralty, upon the construction given by the crown lawyers, to an act of parliament;—a great departure from the ordinary principles of English jurisprudence, but which has been maintained, nevertheless, by the force of habit and precedent, and is adopted in our own existing systems of government.

"There lie," says another English writer, whose connexion with the Board of Trade has enabled him to ascertain many facts connected with colonial history,—"There lie among the documents in the board of trade and paper office, the most satisfactory proofs, from the epoch of the English revolution in 1688, throughout every

reign, and during every administration, of the settled purpose of the colonies to acquire direct independence and positive sovereignty." Perhaps this may be stated somewhat too strongly; but it cannot be denied, that from the very nature of the establishments here, and from the general character of the measures respecting their concerns, early adopted, and steadily pursued by the English government, a division of the empire was the natural and necessary result to which everything tended.

I have dwelt on this topic, because it seems to me, that the peculiar original character of the New England colonies, and certain causes coeval with their existence, have had a strong and decided influence on all their subsequent history, and especially on the great event of the Revolution. Whoever would write our history, and would understand and explain early transactions, should comprehend the nature and force of the feeling which I have endeavoured to describe. As a son, leaving the house of his father for his own, finds, by the order of nature, and the very law of his being, nearer and dearer objects around which his affections circle, while his attachment to the parental roof becomes moderated, by degrees, to a composed regard, and an affectionate remembrance; so our ancestors, leaving their native land, not without some violence to the feelings of nature and affection, yet, in time, found here a new circle of engagements, interests, and affections; a feeling, which more and more encroached upon the old, till an undivided sentiment, *that this was their country*, occupied the heart; and patriotism, shutting out from its embraces the parent realm, became *local* to America.

Some retrospect of the century which has now elapsed, is among the duties of the occasion. It must, however, necessarily be imperfect, to be compressed within the limits of a single discourse. I shall content myself, therefore, with taking notice of a few of the leading, and most important occurrences, which have distinguished the period.

When the first century closed, the progress of the country appeared to have been considerable; notwithstanding that, in comparison with its subsequent advancement, it now seems otherwise. A broad and lasting foundation had been laid: excellent institutions had been established; much of the prejudices of former times had become removed; a more liberal and catholic spirit on subjects of religious concern had begun to extend itself, and many things conspired to give promise of increasing future prosperity. Great men had arisen in public life, and the liberal professions. The Mathers, father and son, were then sinking low in the western horizon; Leverett, the learned, the accomplished, the excellent Leverett, was about to withdraw his brilliant and useful light. In Pemberton, great hopes had been suddenly extinguished, but Prince and Colman, were in our sky; and the crepuscular light had begun to flash along the East, of a great luminary which was about to appear; and which was to mark the age with his own name, as the age of Franklin.

The bloody Indian wars, which harassed the people for a part of the first century; the restrictions on the trade of the colonies—added to the discouragements inherently belonging to all forms of

colonial government; the distance from Europe, and the small hope of immediate profit to adventurers, are among the causes which had contributed to retard the progress of population. Perhaps it may be added, also, that during the period of the civil wars in England, and the reign of Cromwell, many persons, whose religious opinions and religious temper might, under other circumstances, have induced them to join the New England colonists, found reasons to remain in England; either on account of active occupation in the scenes which were passing, or of an anticipation of the enjoyment, in their own country, of a form of government, civil and religious, accommodated to their views and principles. The violent measures, too, pursued against the colonies in the reign of Charles the second, the mockery of a trial, and the forfeiture of the charters, were serious evils. And during the open violences of the short reign of James the second, and the tyranny of Andros, as the venerable historian of Connecticut observes, "*All the motives to great actions, to industry, economy, enterprise, wealth, and population, were in a manner annihilated. A general inactivity and languishment pervaded the public body Liberty, property, and everything which ought to be dear to men, every day grew more and more insecure.*"

With the revolution in England, a better prospect had opened on this country, as well as on that. The joy had been as great, at that event, and far more universal in New than in Old England. A new charter had been granted to Massachusetts, which, although it did not confirm to her inhabitants all their former privileges, yet relieved them from great evils and embarrassments, and promised future security. More than all, perhaps, the revolution in England, had done good to the general cause of liberty and justice. A blow had been struck in favor of the rights and liberties, not of England alone, but of descendants and kinsmen of England, all over the world. Great political truths had been established. The champions of liberty had been successful in a fearful and perilous conflict. Somers, and Cavendish, and Jekyl, and Howard, had triumphed in one of the most noble causes ever undertaken by men. A revolution had been made upon principle. A monarch had been dethroned, for violating the original compact between King and People. The rights of the people to partake in the government, and to limit the monarch by fundamental rules of government, had been maintained; and however unjust the government of England might afterwards be, towards other governments or towards her colonies, she had ceased to be governed herself by the arbitrary maxims of the Stuarts.

New England had submitted to the violence of James the second, not longer than Old England. Not only was it reserved to Massachusetts, that on her soil should be acted the first scene of that great revolutionary Drama, which was to take place near a century afterwards, but the English revolution itself, as far as the colonies were concerned, commenced in Boston. A direct and forcible resistance to the authority of James the second, was the seizure and imprisonment of Andros, in April 1689. The pulse of Liberty beat as high in the extremities as at the heart. The vigorous feeling of the Colony burst out, before it was known how the parent country

would finally conduct itself. The king's representative, Sir Edmund Andros, was a prisoner in the castle at Boston, before it was or could be known, that the king himself had ceased to exercise his full dominion on the English throne.

Before it was known here, whether the invasion of the Prince of Orange would or could prove successful; as soon only as it was known that it had been undertaken, the people of Massachusetts, at the imminent hazard of their lives and fortunes, had accomplished the revolution as far as respected themselves. It is probable, that, reasoning on general principles, and the known attachment of the English people to their constitution and liberties, and their deep and fixed dislike of the king's religion and politics, the people of New England expected a catastrophe fatal to the power of the reigning Prince. Yet, it was not either certain enough, or near enough, to come to their aid against the authority of the crown, in that crisis which had arrived, and in which they trusted to put themselves, relying on God, and their own courage. There were spirits in Massachusetts, congenial with the spirits of the distinguished friends of the revolution in England. There were those, who were fit to associate with the boldest asserters of civil liberty; and Mather himself, then in England, was not unworthy to be ranked with those sons of the church, whose firmness and spirit in resisting kingly encroachment in religion, entitled them to the gratitude of their own and succeeding ages.

The second century opened upon New England under circumstances which evinced that much had already been accomplished, and that still better prospects, and brighter hopes, were before her. She had laid, deep and strong, the foundations of her society. Her religious principles were firm, and her moral habits exemplary. Her public schools had begun to diffuse widely the elements of knowledge; and the College, under the excellent and acceptable administration of Leverett, had been raised to a high degree of credit and usefulness.

The commercial character of the country, notwithstanding all discouragements, had begun to display itself, and *five hundred vessels*, then belonging to Massachusetts, placed her in relation to commerce, thus early, at the head of the colonies. An author who wrote very near the close of the first century says; "New England is almost deserving that *noble name*, so mightily hath it increased; and from a small settlement, at first, is now become a *very populous* and *flourishing* government. The *capital city*, Boston, is a place of *great wealth and trade;* and by much the largest of any in the English empire of America; and not exceeded but by few cities, perhaps two or three, in all the American world."

But, if our ancestors at the close of the first century, could look back with joy, and even admiration at the progress of the country; what emotions must we not feel, when, from the point in which we stand, we also look back and run along the events of the century which has now closed? The country, which then, as we have seen, was thought deserving of a "noble name;" which then had "mightily increased," and become "very populous;" what was it, in comparison with what our eyes behold it? At that period, a very

great proportion of its inhabitants lived in the eastern section of Massachusetts proper, and in this colony. In Connecticut, there were towns along the coast, some of them respectable, but in the interior, all was a wilderness beyond Hartford. On Connecticut river, settlements had proceeded as far up as Deerfield, and Fort Dummer had been built, near where is now the south line of New Hampshire. In New Hampshire, no settlement was then begun thirty miles from the mouth of Piscataqua river, and, in what is now Maine, the inhabitants were confined to the coast. The aggregate of the whole population of New England did not exceed one hundred and sixty thousand. Its present amount is probably one million seven hundred thousand. Instead of being confined to its former limits, her population has rolled backward and filled up the spaces included within her actual local boundaries. Not this only, but it has overflowed those boundaries, and the waves of emigration have pressed, farther and farther toward the west. The Alleghany has not checked it; the banks of the Ohio have been covered with it. New England farms, houses, villages, and churches spread over, and adorn the immense extent from the Ohio to Lake Erie; and stretch along, from the Alleghany onwards, beyond the Miamis, and toward the Falls of St. Anthony. Two thousand miles westward from the rock where their fathers landed, may now be found the sons of the Pilgrims; cultivating smiling fields, rearing towns and villages, and cherishing, we trust, the patrimonial blessings of wise institutions, of liberty, and religion. The world has seen nothing like this. Regions large enough to be empires, and which, half a century ago, were known only as remote and unexplored wildernesses, are now teeming with population, and prosperous in all the great concerns of life; in good governments, the means of subsistence, and social happiness. It may be safely asserted, that there are now more than a million of people, descendants of New England ancestry, living free and happy, in regions, which hardly sixty years ago were tracts of unpenetrated forest. Nor do rivers, or mountains, or seas resist the progress of industry and enterprise. Ere long, the sons of the Pilgrims will be on the shores of the Pacific. The imagination hardly keeps up with the progress of population, improvement, and civilisation.

It is now five and forty years, since the growth and rising glory of America were portrayed in the English parliament, with inimitable beauty, by the most consummate orator of modern times. Going back somewhat more than half a century, and describing our progress as foreseen, from that point, by his amiable friend Lord Bathurst, then living, he spoke of the wonderful progress which America had made during the period of a single human life. There is no American heart, I imagine, that does not glow, both with conscious patriotic pride, and admiration for one of the happiest efforts of eloquence, so often as the vision, of "that little speck, scarce visible in the mass of national interest, a small seminal principle, rather than a formed body," and the progress of its astonishing developement and growth, are recalled to the recollection. But a stronger feeling might be produced, if we were able to take up this prophetic description where he left it; and placing ourselves at the point of time in which he

was speaking, to set forth with equal felicity the subsequent progress of the country. There is yet among the living a most distinguished and venerable name, a descendant of the Pilgrims; one who has been attended through life by a great and fortunate genius; a man illustrious by his own great merits, and favored of Heaven in the long continuation of his years. The time when the English orator was thus speaking of America, preceded, but by a few days, the actual opening of the revolutionary drama at Lexington. He to whom I have alluded, then at the age of forty, was among the most zealous and able defenders of the violated rights of his country. He seemed already to have filled a full measure of public service, and attained an honorable fame. The moment was full of difficulty and danger, and big with events of immeasurable importance. The country was on the very brink of a civil war, of which no man could foretell the duration or the result. Something more than a courageous hope, or characteristic ardor, would have been necessary to impress the glorious prospect on his belief, if, at that moment, before the sound of the first shock of actual war had reached his ears, some attendant spirit had opened to him the vision of the future; if it had said to him, "The blow is struck, and America is severed from England forever!" if it had informed him, that he himself, the next annual revolution of the sun, should put his own hand to the great instrument of Independence, and write his name where all nations should behold it, and all time should not efface it; that ere long he himself should maintain the interest and represent the sovereignty of his new-born country, in the proudest courts of Europe; that he should one day exercise her supreme magistracy; that he should yet live to behold ten millions of fellow citizens paying him the homage of their deepest gratitude and kindest affections; that he should see distinguished talent and high public trust resting where his name rested; that he should even see with his own unclouded eyes, the close of the second century of New England, who had begun life almost with its commencement, and lived through nearly half the whole history of his country; and that on the morning of this auspicious day, he should be found in the political councils of his native state, revising, by the light of experience, that system of government, which forty years before he had assisted to frame and establish; and great and happy as he should then behold his country, there should be nothing in prospect to cloud the scene, nothing to check the ardor of that confident and patriotic hope, which should glow in his bosom to the end of his long protracted and happy life.

It would far exceed the limits of this discourse, even to mention the principal events in the civil and political history of New England during the century; the more so, as for the last half of the period, that history has been, most happily, closely interwoven with the general history of the United States. New England bore an honorable part in the wars which took place between England and France. The capture of Louisburg gave her a character for military achievement; and in the war which terminated with the peace of 1763, her exertions on the frontiers were of most essential service as well to the mother country as to all the colonies.

In New England the war of the revolution commenced. I address those who remember the memorable 19th of April 1775; who shortly after saw the burning spires of Charlestown; who beheld the deeds of Prescott, and heard the voice of Putnam, amidst the storm of war, and saw the generous Warren fall, the first distinguished victim in the cause of liberty. It would be superfluous to say, that no portion of the country did more than the states of New England, to bring the revolutionary struggle to a successful issue. It is scarcely less to her credit, that she saw early the necessity of a closer union of the states, and gave an efficient and indispensable aid to the establishment and organization of the federal government.

Perhaps we might safely say, that a new spirit, and a new excitement began to exist here, about the middle of the last century. To whatever causes it may be imputed, there seems then to have commenced a more rapid improvement. The colonies had attracted more of the attention of the mother country, and some renown in arms had been acquired. Lord Chatham was the first English minister who attached high importance to these possessions of the crown, and who foresaw anything of their future growth and extension. His opinion was, that the great rival of England was chiefly to be feared as a maritime and commercial power, and to drive her out of North America, and deprive her of her West India possessions was a leading object in his policy. He dwelt often on the fisheries, as nurseries for British seamen, and the colonial trade, as furnishing them employment. The war, conducted by him with so much vigor, terminated in a peace, by which Canada was ceded to England. The effect of this was immediately visible in the New England colonies; for the fear of Indian hostilities on the frontiers being now happily removed, settlements went on with an activity before that time altogether unprecedented, and public affairs wore a new and encouraging aspect. Shortly after this fortunate termination of the French war, the interesting topics connected with the taxation of America by the British Parliament began to be discussed, and the attention and all the faculties of the people drawn towards them. There is perhaps no portion of our history more full of interest than the period from 1760 to the actual commencement of the war. The progress of opinion, in this period, though less known, is not less important, than the progress of arms afterwards. Nothing deserves more consideration than those events and discussions which affected the public sentiment, and settled the revolution in men's minds, before hostilities openly broke out.

Internal improvement followed the establishment, and prosperous commencement, of the present government. More has been done for roads, canals, and other public works, within the last thirty years, than in all our former history. In the first of these particulars, few countries excel the New England States. The astonishing increase of their navigation and trade is known to every one, and now belongs to the history of our national wealth.

We may flatter ourselves, too, that literature and taste have not been stationary, and that some advancement has been made in the elegant, as well as in the useful arts.

The nature and constitution of society and government, in this country, are interesting topics, to which I would devote what remains of the time allowed to this occasion. Of our system of government, the first thing to be said, is, that it is really and practically a free system. It originates entirely with the people, and rests on no other foundation than their assent. To judge of its actual operation, it is not enough to look merely at the form of its construction. The practical character of government depends often on a variety of considerations, besides the abstract frame of its constitutional organization. Among these, are the condition and tenure of property; the laws regulating its alienation and descent; the presence or absence of a military power; an armed or unarmed yeomanry; the spirit of the age, and the degree of general intelligence. In these respects it cannot be denied, that the circumstances of this country are most favorable to the hope of maintaining the government of a great nation on principles entirely popular. In the absence of military power, the nature of government must essentially depend on the manner in which property is holden and distributed. There is a natural influence belonging to property, whether it exists in many hands or few; and it is on the rights of property, that both despotism and unrestrained popular violence ordinarily commence their attacks. Our ancestors began their system of government here, under a condition of comparative equality, in regard to wealth, and their early laws were of a nature to favor and continue this equality.* A republican form of government rests, not more on political constitutions, than on those laws which regulate the descent and transmission of property.—Governments like ours could not have been maintained, where property was holden according to the principles of the feudal system; nor, on the other hand, could the feudal constitution possibly exist with us. Our New England ancestors brought hither no great capitals from Europe; and if they had, there was nothing productive in which they could have been invested. They left behind them the whole feudal policy of the other continent. They broke away, at once, from the system of military service, established in the dark ages, and which continues, down even to the present time, more or less to affect the condition of property all over Europe. They came to a new country. There were, as yet, no lands yielding rent, and no tenants rendering service. The whole soil was unreclaimed from barbarism. They were themselves, either from their original condition, or from the necessity of their common interest, nearly on a general level, in respect to property. Their situation demanded a parceling out and division of the lands; and it may be fairly said, that this necessary act *fixed the future frame and form of their government.* The character of their political institutions was determined by the fundamental laws respecting property. The laws rendered estates divisible among sons and daughters. The right of primogeniture, at first limited, and curtailed, was afterwards

* The contents of several of the following pages will be found also in the printed account of the proceedings of the Massachusetts convention, in some remarks made by the author a few days before the delivery of this discourse. As those remarks were originally written for this discourse, it was thought proper not to omit them, in the publication, notwithstanding this circumstance.

abolished. The property was all freehold. The entailment of estates, long trusts, and the other processes for fettering and tying up inheritances, were not applicable to the condition of society, and seldom made use of. On the contrary, alienation of the land was every way facilitated, even to the subjecting of it to every species of debt. The establishment of public registries, and the simplicity of our forms of conveyance, have greatly facilitated the change of real estate from one proprietor to another. The consequence of all these causes has been, a great subdivision of the soil, and a great equality of condition; the true basis most certainly of a popular government.—"If the people," says Harrington, "hold three parts in four of the territory, it is plain there can neither be any single person nor nobility able to dispute the government with them; in this case, therefore, *except force be interposed*, they govern themselves."

The history of other nations may teach us how favorable to public liberty is the division of the soil into small freeholds, and a system of laws, of which the tendency is, without violence or injustice, to produce and to preserve a degree of equality of property. It has been estimated, if I mistake not, that about the time of Henry the VII., four-fifths of the land in England was holden by the great barons and ecclesiastics. The effects of a growing commerce soon afterwards began to break in on this state of things, and before the revolution in 1688, a vast change had been wrought. It may be thought probable, that, for the last half century, the process of subdivision in England, has been retarded, if not reversed; that the great weight of taxation has compelled many of the lesser freeholders to dispose of their estates, and to seek employment in the army and navy; in the professions of civil life; in commerce or in the colonies. The effect of this on the British constitution cannot but be most unfavorable. A few large estates grow larger; but the number of those who have no estates also increases; and there may be danger, lest the inequality of property become so great, that those who possess it may be dispossessed by force; in other words, that the government may be overturned.

A most interesting experiment of the effect of a subdivision of property on government, is now making in France. It is understood, that the law regulating the transmission of property, in that country, now divides it, real and personal, among all the children, equally, both sons and daughters; and that there is, also, a very great restraint on the power of making dispositions of property by will. It has been supposed, that the effects of this might probably be, in time, to break up the soil into such small subdivisions, that the proprietors would be too poor to resist the encroachments of executive power. I think far otherwise. What is lost in individual wealth, will be more than gained in numbers, in intelligence, and in a sympathy of sentiment. If, indeed, only one, or a few landholders were to resist the crown, like the barons of England, they must, of course, be great and powerful landholders with multitudes of retainers, to promise success. But if the proprietors of a given extent of territory are summoned to resistance, there is no reason to believe that such resistance would be less forcible, or less successful, because the number of such proprietors should be great. Each would per-

ceive his own importance, and his own interest, and would feel that natural elevation of character which the consciousness of property inspires. A common sentiment would unite all, and numbers would not only add strength, but excite enthusiasm. It is true, that France possesses a vast military force, under the direction of an hereditary executive government; and military power, it is possible, may overthrow any government. It is in vain, however, in this period of the world, to look for security against military power, to the arm of the great landholders. That notion is derived from a state of things long since past; a state in which a feudal baron, with his retainers, might stand against the sovereign, who was himself but the greatest baron, and his retainers. But at present, what could the richest landholder do, against one regiment of disciplined troops? Other securities, therefore, against the prevalence of military power must be provided. Happily for us, we are not so situated as that any purpose of national defence requires, ordinarily and constantly, such a military force as might seriously endanger our liberties.

In respect, however, to the recent law of succession in France, to which I have alluded, I would, presumptuously perhaps, hazard a conjecture, that if the government do not change the law, the law, in half a century, will change the government; and that this change will be not in favor of the power of the crown, as some European writers have supposed, but against it. Those writers only reason upon what they think correct general principles, in relation to this subject. They acknowledge a want of experience. Here we have had that experience; and we know that a multitude of small proprietors, acting with intelligence, and that enthusiasm which a common cause inspires, constitute not only a formidable, but an invincible power.

The true principle of a free and popular government would seem to be, so to construct it, as to give to all, or at least to a very great majority, an interest in its preservation: to found it, as other things are founded, on men's interest. The stability of government requires that those who desire its continuance should be more powerful than those who desire its dissolution. This power, of course, is not always to be measured by mere numbers.—Education, wealth, talents, are all parts and elements of the general aggregate of power; but numbers, nevertheless, constitute ordinarily the most important consideration, unless indeed there be *a military force*, in the hands of the few, by which they can control the many. In this country we have actually existing systems of government, in the maintenance of which, it should seem, a great majority, both in numbers and in other means of power and influence, must see their interest. But this state of things is not brought about solely by written political constitutions, or the mere manner of organizing the government; but also by the laws which regulate the descent and transmission of property. The freest government, if it could exist, would not be long acceptable, if the tendency of the laws were to create a rapid accumulation of property in few hands, and to render the great mass of the population dependent and pennyless. In such a case, the popular power would be likely to break in upon the rights of property, or else the influence of property to limit and

control the exercise of popular power.—Universal suffrage, for example, could not long exist in a community, where there was great inequality of property. The holders of estates would be obliged in such case, either, in some way, to restrain the right of suffrage; or else such right of suffrage would, long before, divide the property. In the nature of things, those who have not property, and see their neighbours possess much more than they think them to need, cannot be favorable to laws made for the protection of property. When this class becomes numerous, it grows clamorous. It looks on property as its prey and plunder, and is naturally ready, at all times, for violence and revolution.

It would seem, then, to be the part of political wisdom, to found government on property; and to establish such distribution of property, by the laws which regulate its transmission and alienation, as to interest the great majority of society in the support of the government. This is, I imagine, the true theory and the actual practice of our republican institutions. With property divided, as we have it, no other government than that of a republic could be maintained, even were we foolish enough to desire it. There is reason, therefore, to expect a long continuance of our systems. Party and passion, doubtless, may prevail at times, and much temporary mischief be done. Even modes and forms may be changed, and perhaps for the worse. But a great revolution, in regard to property, must take place, before our governments can be moved from their republican basis, unless they be violently struck off by military power. The people possess the property, more emphatically than it could ever be said of the people of any other country, and they can have no interest to overturn a government which protects that property by equal laws.

Let it not be supposed, that this state of things possesses too strong tendencies towards the production of a dead and uninteresting level in society. Such tendencies are sufficiently counteracted by the infinite diversities in the characters and fortunes of individuals. Talent, activity, industry, and enterprise tend at all times to produce inequality and distinction; and there is room still for the accumulation of wealth, with its great advantages, to all reasonable and useful extent. It has been often urged against the state of society in America, that it furnishes no class of men of fortune and leisure. This may be partly true, but it is not entirely so, and the evil, if it be one, would affect rather the progress of taste and literature, than the general prosperity of the people. But the promotion of taste and literature cannot be primary objects of political institutions; and if they could, it might be doubted, whether, in the long course of things, as much is not gained by a wide diffusion of general knowledge, as is lost by abridging the number of those whom fortune and leisure enable to devote themselves exclusively to scientific and literary pursuits. However this may be, it is to be considered that it is the spirit of our system to be equal, and general, and if there be particular disadvantages incident to this, they are far more than counterbalanced by the benefits which weigh against them. The important concerns of society are generally conducted, in all countries, by the men of business and practical

ability; and even in matters of taste and literature, the advantages of mere leisure are liable to be overrated. If there exist adequate means of education, and the love of letters be excited, that love will find its way to the object of its desire, through the crowd and pressure of the most busy society.

Connected with this division of property, and the consequent participation of the great mass of people in its possession and enjoyments, is the system of representation, which is admirably accommodated to our condition, better understood among us, and more familiarly and extensively practised, in the higher and in the lower departments of government, than it has been with any other people. Great facility has been given to this in New England by the early division of the country into townships or small districts, in which all concerns of local police are regulated, and in which representatives to the legislature are elected. Nothing can exceed the utility of these little bodies. They are so many councils, or parliaments, in which common interests are discussed, and useful knowledge acquired and communicated.

The division of governments into departments, and the division, again, of the legislative department into two chambers, are essential provisions in our systems. This last, although not new in itself, yet seems to be new in its application to governments wholly popular. The Grecian republics, it is plain, knew nothing of it; and in Rome, the check and balance of legislative power, such as it was, lay between the people and the senate. Indeed few things are more difficult than to ascertain accurately the true nature and construction of the Roman commonwealth. The relative power of the senate and the people, the consuls and the tribunes, appears not to have been at all times the same, nor at any time accurately defined or strictly observed. Cicero, indeed, describes to us an admirable arrangement of political power, and a balance of the constitution, in that beautiful passage, in which he compares the democracies of Greece with the Roman commonwealth. "*O morem preclarum, disciplinamque, quam a majoribus accepimus, si quidem teneremus! sed nescio quo pacto jam de manibus elabitur. Nullam enim illi nostri sapientissimi et sanctissimi viri vim concionis esse voluerunt, quae scisseret plebs, aut quae populus juberet; summota concione, distributis partibus, tributim, et centuriatim, descriptis ordinibus, classibus, œtatibus, auditis auctoribus, re multos dies promulgata et cognita, juberi vetarique voluerunt. Graecorum autem totae respublicae sedentis concionis temeritate administrantur.*"

But at what time this wise system existed in this perfection at Rome, no proofs remain to show. Her constitution, originally framed for a monarchy, never seemed to be adjusted, in its several parts, after the expulsion of the kings. Liberty there was, but it was a disputatious, an uncertain, an ill-secured liberty. The patrician and plebeian orders, instead of being matched and joined, each in its just place and proportion, to sustain the fabric of the state, were rather like hostile powers, in perpetual conflict. With us, an attempt has been made, and so far not without success, to divide representation into chambers, and, by difference of age, character,

qualification or mode of election, to establish salutary checks, in governments altogether elective.

Having detained you so long with these observations, I must yet advert to another most interesting topic, the Free Schools. In this particular, New England may be allowed to claim, I think, a merit of a peculiar character. She early adopted and has constantly maintained the principle, that it is the undoubted right, and the bounden duty of government, to provide for the instruction of all youth. That which is elsewhere left to chance, or to charity, we secure by law. For the purpose of public instruction, we hold every man subject to taxation in proportion to his property, and we look not to the question, whether he himself have, or have not, children to be benefited by the education for which he pays. We regard it as a wise and liberal system of police, by which property, and life, and the peace of society are secured. We seek to prevent, in some measure, the extension of the penal code, by inspiring a salutary and conservative principle of virtue and of knowledge in an early age. We hope to excite a feeling of respectability, and a sense of character, by enlarging the capacity, and increasing the sphere of intellectual enjoyment. By general instruction, we seek, as far as possible, to purify the whole moral atmosphere; to keep good sentiments uppermost, and to turn the strong current of feeling and opinion, as well as the censures of the law, and the denunciations of religion, against immorality and crime. We hope for a security, beyond the law, and above the law, in the prevalence of enlightened and well-principled moral sentiment. We hope to continue and prolong the time, when, in the villages and farm-houses of New England, there may be undisturbed sleep within unbarred doors. And knowing that our government rests directly on the public will, that we may preserve it, we endeavour to give a safe and proper direction to that public will. We do not, indeed, expect all men to be philosophers or statesmen; but we confidently trust, and our expectation of the duration of our system of government rests on that trust, that by the diffusion of general knowledge and good and virtuous sentiments, the political fabric may be secure, as well against open violence and overthrow, as against the slow but sure undermining of licentiousness.

We know, that at the present time, an attempt is making in the English Parliament to provide by law for the education of the poor, and that a gentleman of distinguished character, (Mr. Brougham) has taken the lead, in presenting a plan to government for carrying that purpose into effect. And yet, although the representatives of the three kingdoms listened to him with astonishment as well as delight, we hear no principles, with which we ourselves have not been familiar from youth; we see nothing in the plan, but an approach towards that system which has been established in New England for more than a century and a half. It is said that in England, not more than *one child in fifteen* possesses the means of being taught to read and write; in Wales, *one in twenty;* in France, until lately, when some improvement was made, not more than *one in thirty-five.* Now, it is hardly too strong to say, that in New England, *every child possesses* such means. It would be difficult to find an instance to

the contrary, unless where it should be owing to the negligence of the parent;—and in truth the means are actually used and enjoyed by nearly every one.

A youth of fifteen, of either sex, who cannot both read and write, is very unfrequently to be found. Who can make this comparison, or contemplate this spectacle, without delight and a feeling of just pride? Does any history show property more beneficently applied? Did any government ever subject the property of those who have estates, to a burden, for a purpose more favorable to the poor, or more useful to the whole community?

A conviction of the importance of public instruction was one of the earliest sentiments of our ancestors. No lawgiver of ancient or modern times has expressed more just opinions, or adopted wiser measures, than the early records of the colony of Plymouth show to have prevailed here. Assembled on this very spot, a hundred and fifty-three years ago, the legislature of this colony declared, "For as much as the maintenance of good literature doth much tend to the advancement of the weal and flourishing state of societies and republics, this court doth therefore order, that in whatever township in this government, consisting of fifty families or upwards, any meet man shall be obtained to teach a grammar school, such township shall allow at least twelve pounds, to be raised by rate, on all the inhabitants."

Having provided, that all youth should be instructed in the elements of learning by the institution of free schools, our ancestors had yet another duty to perform. Men were to be educated for the professions, and the public. For this purpose they founded the University, and with incredible zeal and perseverance they cherished and supported it, through all trials and discouragements. On the subject of the University, it is not possible for a son of New England to think without pleasure, nor to speak without emotion. Nothing confers more honor on the state where it is established, or more utility on the country at large. A respectable University is an establishment, which must be the work of time. If pecuniary means were not wanting, no new institution could possess character and respectability at once. We owe deep obligation to our ancestors, who began, almost on the moment of their arrival, the work of building up this institution.

Although established in a different government, the colony of Plymouth manifested warm friendship for Harvard College. At an early period, its government took measures to promote a general subscription throughout all the towns in this colony, in aid of its small funds. Other colleges were subsequently founded and endowed, in other places, as the ability of the people allowed; and we may flatter ourselves, that the means of education, at present enjoyed in New England, are not only adequate to the diffusion of the elements of knowledge among all classes, but sufficient also for respectable attainments in literature and the sciences.

Lastly, our ancestors have founded their system of government on morality and religious sentiment. Moral habits, they believed, cannot safely be trusted on any other foundation than religious principle, nor any government be secure which is not supported by moral

habits. Living under the heavenly light of revelation, they hoped to find all the social dispositions, all the duties which men owe to each other and to society, enforced and performed. Whatever makes men good Christians, makes them good citizens. Our fathers came here to enjoy their religion free and unmolested; and, at the end of two centuries, there is nothing upon which we can pronounce more confidently, nothing of which we can express a more deep and earnest conviction, than of the inestimable importance of that religion to man, both in regard to this life, and that which is to come.

If the blessings of our political and social condition have not been too highly estimated, we cannot well overrate the responsibility and duty which they impose upon us. We hold these institutions of government, religion, and learning, to be transmitted, as well as enjoyed. We are in the line of conveyance, through which whatever has been obtained by the spirit and efforts of our ancestors, is to be communicated to our children.

We are bound to maintain public liberty, and by the example of our own systems, to convince the world, that order, and law, religion and morality, the rights of conscience, the rights of persons, and the rights of property, may all be preserved and secured, in the most perfect manner, by a government entirely and purely elective. If we fail in this, our disaster will be signal, and will furnish an argument, stronger than has yet been found, in support of those opinions, which maintain that government can rest safely on nothing but power and coercion. As far as experience may show errors in our establishments, we are bound to correct them; and if any practices exist, contrary to the principles of justice and humanity, within the reach of our laws or our influence, we are inexcusable if we do not exert ourselves to restrain and abolish them.

I deem it my duty on this occasion to suggest, that the land is not yet wholly free from the contamination of a traffic, at which every feeling of humanity must forever revolt—I mean the African slave trade. Neither public sentiment, nor the law, has hitherto been able entirely to put an end to this odious and abominable trade. At the moment when God, in his mercy, has blessed the Christian world with an universal peace, there is reason to fear, that to the disgrace of the Christian name and character, new efforts are making for the extension of this trade, by subjects and citizens of Christian states, in whose hearts no sentiments of humanity or justice inhabits, and over whom neither the fear of God nor the fear of man exercises a control. In the sight of our law, the African slave trader is a pirate and a felon; and in the sight of Heaven, an offender far beyond the ordinary depth of human guilt. There is no brighter part of our history, than that which records the measures which have been adopted by the government, at an early day, and at different times since, for the suppression of this traffic; and I would call on all the true sons of New England, to co-operate with the laws of man, and the justice of Heaven. If there be, within the extent of our knowledge or influence, any participation in this traffic, let us pledge ourselves here, upon the rock of Plymouth, to extirpate and destroy it. It is not fit that the land of the Pilgrims should bear the shame longer. I hear the sound of the hammer, I see the smoke of the furnaces

where manacles and fetters are still forged for human limbs. I see the visages of those, who by stealth, and at midnight, labor in this work of hell, foul and dark, as may become the artificers of such instruments of misery and torture. Let that spot be purified, or let it cease to be of New England. Let it be purified, or let it be set aside from the Christian world; let it be put out of the circle of human sympathies and human regards, and let civilized man henceforth have no communion with it.

I would invoke those who fill the seats of justice, and all who minister at her altar, that they execute the wholesome and necessary severity of the law. I invoke the ministers of our religion, that they proclaim its denunciation of these crimes, and add its solemn sanctions to the authority of human laws. If the pulpit be silent, whenever, or wherever, there may be a sinner bloody with this guilt, within the hearing of its voice, the pulpit is false to its trust. I call on the fair merchant, who has reaped his harvest upon the seas, that he assist in scourging from those seas the worst pirates which ever infested them. That ocean, which seems to wave with a gentle magnificence to waft the burden of an honest commerce, and to roll along its treasures with a conscious pride; that ocean, which hardy industry regards, even when the winds have ruffled its surface, as a field of grateful toil; what is it to the victim of this oppression, when he is brought to its shores, and looks forth upon it, for the first time, from beneath chains, and bleeding with stripes? What is it to him, but a wide spread prospect of suffering, anguish and death? Nor do the skies smile longer, nor is the air longer fragrant to him. The sun is cast down from heaven. An inhuman and accursed traffic has cut him off in his manhood, or in his youth, from every enjoyment belonging to his being, and every blessing which his Creator intended for him.

The Christian communities send forth their emissaries of religion and letters, who stop, here and there, along the coast of the vast continent of Africa, and with painful and tedious efforts, make some almost imperceptible progress in the communication of knowledge, and in the general improvement of the natives who are immediately about them. Not thus slow and imperceptible is the transmission of the vices and bad passions which the subjects of Christian states carry to the land. The slave trade having touched the coast, its influence and its evils spread, like a pestilence, over the whole continent, making savage wars more savage, and more frequent, and adding new and fierce passions to the contests of barbarians.

I pursue this topic no further; except again to say, that all Christendom being now blessed with peace, is bound by everything which belongs to its character, and to the character of the present age, to put a stop to this inhuman and disgraceful traffic.

We are bound not only to maintain the general principles of public liberty, but to support also those existing forms of government, which have so well secured its enjoyment, and so highly promoted the public prosperity. It is now more than thirty years that these states have been united under the Federal constitution, and whatever fortune may await them hereafter, it is impossible that this period of their history should not be regarded as distinguished by

signal prosperity and success. They must be sanguine, indeed, who can hope for benefit from change. Whatever division of the public judgment may have existed in relation to particular measures of the government, all must agree, one should think, in the opinion, that in its general course it has been eminently productive of public happiness. Its most ardent friends could not well have hoped from it more than it has accomplished; and those who disbelieved or doubted ought to feel less concern about predictions, which the event has not verified, than pleasure in the good which has been obtained. Whoever shall hereafter write this part of our history, although he may see occasional errors or defects, will be able to record no great failure in the ends and objects of government. Still less will he be able to record any series of lawless and despotic acts, or any successful usurpation. His page will contain no exhibition of provinces depopulated, of civil authority habitually trampled down by military power, or of a community crushed by the burden of taxation. He will speak, rather, of public liberty protected, and public happiness advanced; of increased revenue, and population augmented beyond all example; of the growth of commerce, manufactures, and the arts; and of that happy condition, in which the restraint and coercion of government are almost invisible and imperceptible, and its influence felt only in the benefits which it confers. We can entertain no better wish for our country than that this government may be preserved; nor have a clearer duty than to maintain and support it in the full exercise of all its just constitutional powers.

The cause of science and literature also imposes upon us an important and delicate trust. The wealth and population of the country are now so far advanced, as to authorise the expectation of a correct literature, and a well formed taste, as well as respectable progress in the abstruse sciences. The country has risen from a state of colonial dependency; it has established an independent government, and is now in the undisturbed enjoyment of peace and political security. The elements of knowledge are universally diffused, and the reading portion of the community large. Let us hope that the present may be an auspicious era of literature. If, almost on the day of their landing, our ancestors founded schools and endowed colleges, what obligations do not rest upon us, living under circumstances so much more favorable both for providing and for using the means of education? Literature becomes free institutions. It is the graceful ornament of civil liberty, and a happy restraint on the asperities, which political controversy sometimes occasions. Just taste is not only an embellishment of society, but it rises almost to the rank of the virtues, and diffuses positive good throughout the whole extent of its influence. There is a connexion between right feeling and right principles, and truth in taste is allied with truth in morality. With nothing in our past history to discourage us, and with something in our present condition and prospects to animate us, let us hope, that as it is our fortune to live in an age when we may behold a wonderful advancement of the country in all its other great interests, we may see also equal progress and success attend the cause of letters.

Finally, let us not forget the religious character of our origin. Our fathers were brought hither by their high veneration for the Christian religion. They journeyed by its light, and labored in its hope. They sought to incorporate its principles with the elements of their society, and to diffuse its influence through all their institutions, civil, political, or literary. Let us cherish these sentiments, and extend this influence still more widely; in the full conviction, that that is the happiest society, which partakes in the highest degree of the mild and peaceable spirit of Christianity.

The hours of this day are rapidly flying, and this occasion will soon be passed. Neither we nor our children can expect to behold its return. They are in the distant regions of futurity, they exist only in the all-creating power of God, who shall stand here, a hundred years hence, to trace, through us, their descent from the Pilgrims, and to survey, as we have now surveyed, the progress of their country, during the lapse of a century. We would anticipate their concurrence with us in our sentiments of deep regard for our common ancestors. We would anticipate and partake the pleasure with which they will then recount the steps of New England's advancement. On the morning of that day, although it will not disturb us in our repose, the voice of acclamation and gratitude, commencing on the Rock of Plymouth, shall be transmitted through millions of the sons of the Pilgrims, till it lose itself in the murmurs of the Pacific seas.

We would leave for the consideration of those who shall then occupy our places, some proof that we hold the blessings transmitted from our fathers in just estimation; some proof of our attachment to the cause of good government, and of civil and religious liberty; some proof of a sincere and ardent desire to promote everything which may enlarge the understandings and improve the hearts of men. And when, from the long distance of an hundred years, they shall look back upon us, they shall know, at least, that we possessed affections, which, running backward, and warming with gratitude for what our ancestors have done for our happiness, run forward also to our posterity, and meet them with cordial salutation, ere yet they have arrived on the shore of being.

Advance, then, ye future generations! We would hail you, as you rise in your long succession, to fill the places which we now fill, and to taste the blessings of existence, where we are passing, and soon shall have passed, our own human duration. We bid you welcome to this pleasant land of the fathers. We bid you welcome to the healthful skies and the verdant fields of New England. We greet your accession to the great inheritance which we have enjoyed We welcome you to the blessings of good government, and religious liberty. We welcome you to the treasures of science, and the delights of learning. We welcome you to the transcendent sweets of domestic life, to the happiness of kindred, and parents, and children. We welcome you to the immeasurable blessings of rational existence, the immortal hope of Christianity, and the light of everlasting truth!

ADDRESS

DELIVERED AT THE LAYING OF THE CORNER STONE OF THE BUNKER HILL MONUMENT. JUNE 17, 1825.

This uncounted multitude before me, and around me, proves the feeling which the occasion has excited. These thousands of human faces, glowing with sympathy and joy, and, from the impulses of a common gratitude, turned reverently to heaven, in this spacious temple of the firmament, proclaim that the day, the place, and the purpose of our assembling have made a deep impression on our hearts.

If, indeed, there be anything in local association fit to affect the mind of man, we need not strive to repress the emotions which agitate us here. We are among the sepulchres of our fathers. We are on ground, distinguished by their valor, their constancy, and the shedding of their blood. We are here, not to fix an uncertain date in our annals, nor to draw into notice an obscure and unknown spot. If our humble purpose had never been conceived, if we ourselves had never been born, the 17th of June 1775 would have been a day on which all subsequent history would have poured its light, and the eminence where we stand, a point of attraction to the eyes of successive generations. But we are Americans. We live in what may be called the early age of this great continent; and we know that our posterity, through all time, are here to suffer and enjoy the allotments of humanity. We see before us a propable train of great events; we know that our own fortunes have been happily cast; and it is natural, therefore, that we should be moved by the contemplation of occurrences which have guided our destiny before many of us were born, and settled the condition in which we should pass that portion of our existence, which God allows to men on earth.

We do not read even of the discovery of this continent, without feeling something of a personal interest in the event; without being reminded how much it has affected our own fortunes, and our own existence. It is more impossible for us, therefore, than for others, to contemplate with unaffected minds that interesting, I may say, that most touching and pathetic scene, when the great Discoverer of America stood on the deck of his shattered bark, the shades of night falling on the sea, yet no man sleeping; tossed on the billows

of an unknown ocean, yet the stronger billows of alternate hope and despair tossing his own troubled thoughts; extending forward his harassed frame, straining westward his anxious and eager eyes, till Heaven at last granted him a moment of rapture and ecstasy, in blessing his vision with the sight of the unknown world.

Nearer to our times, more closely connected with our fates, and therefore still more interesting to our feelings and affections, is the settlement of our own country by colonists from England. We cherish every memorial of these worthy ancestors; we celebrate their patience and fortitude; we admire their daring enterprise; we teach our children to venerate their piety; and we are justly proud of being descended from men, who have set the world an example of founding civil institutions on the great and united principles of human freedom and human knowledge. To us, their children, the story of their labors and sufferings can never be without its interest. We shall not stand unmoved on the shore of Plymouth, while the sea continues to wash it; nor will our brethren in another early and ancient colony, forget the place of its first establishment, till their river shall cease to flow by it. No vigor of youth, no maturity of manhood, will lead the nation to forget the spots where its infancy was cradled and defended.

But the great event, in the history of the continent, which we are now met here to commemorate; that prodigy of modern times, at once the wonder and the blessing of the world, is the American Revolution. In a day of extraordinary prosperity and happiness, of high national honor, distinction, and power, we are brought together, in this place, by our love of country, by our admiration of exalted character, by our gratitude for signal services and patriotic devotion.

The society, whose organ I am, was formed for the purpose of rearing some honorable and durable monument to the memory of the early friends of American Independence. They have thought, that for this object no time could be more propitious, than the present prosperous and peaceful period; that no place could claim preference over this memorable spot; and that no day could be more auspicious to the undertaking, than the anniversary of the battle which was here fought. The foundation of that monument we have now laid. With solemnities suited to the occasion, with prayers to Almighty God for his blessing, and in the midst of this cloud of witnesses, we have begun the work. We trust it will be prosecuted, and that springing from a broad foundation, rising high in massive solidity and unadorned grandeur, it may remain, as long as Heaven permits the works of man to last, a fit emblem, both of the events in memory of which it is raised, and of the gratitude of those who have reared it.

We know, indeed, that the record of illustrious actions is most safely deposited in the universal remembrance of mankind. We know, that if we could cause this structure to ascend, not only till it reached the skies, but till it pierced them, its broad surfaces could still contain but part of that, which, in an age of knowledge, hath already been spread over the earth, and which history charges itself

with making known to all future times. We know, that no inscription on entablatures less broad than the earth itself, can carry information of the events we commemorate, where it has not already gone; and that no structure, which shall not outlive the duration of letters and knowledge among men, can prolong the memorial. But our object is, by this edifice to show our own deep sense of the value and importance of the achievements of our ancestors; and, by presenting this work of gratitude to the eye, to keep alive similar sentiments, and to foster a constant regard for the principles of the Revolution. Human beings are composed not of reason only, but of imagination also, and sentiment; and that is neither wasted nor misapplied which is appropriated to the purpose of giving right direction to sentiments, and opening proper springs of feeling in the heart. Let it not be supposed that our object is to perpetuate national hostility, or even to cherish a mere military spirit. It is higher, purer, nobler. We consecrate our work to the spirit of national independence, and we wish that the light of peace may rest upon it forever. We rear a memorial of our conviction of that unmeasured benefit, which has been conferred on our own land, and of the happy influences, which have been produced, by the same events, on the general interests of mankind. We come, as Americans, to mark a spot, which must forever be dear to us and our posterity. We wish, that whosoever, in all coming time, shall turn his eye hither, may behold that the place is not undistinguished, where the first great battle of the Revolution was fought. We wish, that this structure may proclaim the magnitude and importance of that event, to every class and every age. We wish, that infancy may learn the purpose of its erection from maternal lips, and that weary and withered age may behold it, and be solaced by the recollections which it suggests. We wish, that labor may look up here, and be proud, in the midst of its toil. We wish, that, in those days of disaster, which, as they come on all nations, must be expected to come on us also, desponding patriotism may turn its eyes hitherward, and be assured that the foundations of our national power still stand strong. We wish, that this column, rising towards heaven among the pointed spires of so many temples dedicated to God, may contribute also to produce, in all minds, a pious feeling of dependence and gratitude. We wish, finally, that the last object on the sight of him who leaves his native shore, and the first to gladden his who revisits it, may be something which shall remind him of the liberty and the glory of his country. Let it rise, till it meet the sun in his coming; let the earliest light of the morning gild it, and parting day linger and play on its summit.

We live in a most extraordinary age. Events so various and so important, that they might crowd and distinguish centuries, are, in our times, compressed within the compass of a single life. When has it happened that history has had so much to record, in the same term of years, as since the 17th of June 1775? Our own Revolution, which, under other circumstances, might itself have been expected to occasion a war of half a century, has been achieved; twenty-four sovereign and independent states erected; and a general

government established over them, so safe, so wise, so free, so practical, that we might well wonder its establishment should have been accomplished so soon, were it not far the greater wonder that it should have been established at all. Two or three millions of people have been augmented to twelve; and the great forests of the West prostrated beneath the arm of successful industry; and the dwellers on the banks of the Ohio and the Mississippi, become the fellow citizens and neighbours of those who cultivate the hills of New England. We have a commerce, that leaves no sea unexplored; navies, which take no law from superior force; revenues, adequate to all the exigencies of government, almost without taxation; and peace with all nations, founded on equal rights and mutual respect.

Europe, within the same period, has been agitated by a mighty revolution, which, while it has been felt in the individual condition and happiness of almost every man, has shaken to the centre her political fabric, and dashed against one another thrones, which had stood tranquil for ages. On this, our continent, our own example has been followed; and colonies have sprung up to be nations. Unaccustomed sounds of liberty and free government have reached us from beyond the track of the sun; and at this moment the dominion of European power, in this continent, from the place where we stand to the south pole, is annihilated forever.

In the meantime, both in Europe and America, such has been the general progress of knowledge; such the improvements in legislation, in commerce, in the arts, in letters, and above all in liberal ideas, and the general spirit of the age, that the whole world seems changed.

Yet, notwithstanding that this is but a faint abstract of the things which have happened since the day of the battle of Bunker Hill, we are but fifty years removed from it; and we now stand here, to enjoy all the blessings of our own condition, and to look abroad on the brightened prospects of the world, while we hold still among us some of those, who were active agents in the scenes of 1775, and who are now here, from every quarter of New England, to visit, once more, and under circumstances so affecting, I had almost said so overwhelming, this renowned theatre of their courage and patriotism.

Venerable men! you have come down to us, from a former generation. Heaven has bounteously lengthened out your lives, that you might behold this joyous day. You are now, where you stood, fifty years ago, this very hour, with your brothers, and your neighbours, shoulder to shoulder, in the strife for your country. Behold, how altered! The same heavens are indeed over your heads; the same ocean rolls at your feet; but all else, how changed! You hear now no roar of hostile cannon, you see no mixed volumes of smoke and flame rising from burning Charlestown. The ground strowed with the dead and the dying; the impetuous charge; the steady and successful repulse; the loud call to repeated assault; the summoning of all that is manly to repeated resistance; a thousand bosoms freely and fearlessly bared in an instant to whatever of terror there

may be in war and death;—all these you have witnessed, but you witness them no more. All is peace. The heights of yonder metropolis, its towers and roofs, which you then saw filled with wives and children and countrymen in distress and terror, and looking with unutterable emotions for the issue of the combat, have presented you to-day with the sight of its whole happy population, come out to welcome and greet you with an universal jubilee. Yonder proud ships, by a felicity of position appropriately lying at the foot of this mount, and seeming fondly to cling around it, are not means of annoyance to you, but your country's own means of distinction and defence. All is peace; and God has granted you this sight of your country's happiness, ere you slumber in the grave forever. He has allowed you to behold and to partake the reward of your patriotic toils; and he has allowed us, your sons and countrymen, to meet you here, and in the name of the present generation, in the name of your country, in the name of liberty, to thank you!

But, alas! you are not all here! Time and the sword have thinned your ranks. Prescott, Putnam, Stark, Brooks, Read, Pomeroy, Bridge! our eyes seek for you in vain amidst this broken band. You are gathered to your fathers, and live only to your country in her grateful remembrance, and your own bright example. But let us not too much grieve, that you have met the common fate of men. You lived, at least, long enough to know that your work had been nobly and successfully accomplished. You lived to see your country's independence established, and to sheathe your swords from war. On the light of Liberty you saw arise the light of Peace, like

> 'another morn,
> Risen on mid-noon;'—

and the sky, on which you closed your eyes, was cloudless.

But—ah!—Him! the first great Martyr in this great cause! Him! the premature victim of his own self-devoting heart! Him! the head of our civil councils, and the destined leader of our military bands; whom nothing brought hither, but the unquenchable fire of his own spirit; Him! cut off by Providence, in the hour of overwhelming anxiety and thick gloom; falling, ere he saw the star of his country rise; pouring out his generous blood, like water, before he knew whether it would fertilize a land of freedom or of bondage! how shall I struggle with the emotions, that stifle the utterance of thy name!—Our poor work may perish; but thine shall endure! This monument may moulder away; the solid ground it rests upon may sink down to a level with the sea; but thy memory shall not fail! Wheresoever among men a heart shall be found, that beats to the transports of patriotism and liberty, its aspirations shall be to claim kindred with thy spirit!

But the scene amidst which we stand does not permit us to confine our thoughts or our sympathies to those fearless spirits, who hazarded or lost their lives on this consecrated spot. We have the happiness to rejoice here in the presence of a most worthy representation of the survivors of the whole Revolutionary Army.

VETERANS! you are the remnant of many a well fought field. You bring with you marks of honor from Trenton and Monmouth, from Yorktown, Camden, Bennington, and Saratoga. VETERANS OF HALF A CENTURY! when in your youthful days, you put everything at hazard in your country's cause, good as that cause was, and sanguine as youth is, still your fondest hopes did not stretch onward to an hour like this! At a period to which you could not reasonably have expected to arrive; at a moment of national prosperity, such as you could never have foreseen, you are now met, here, to enjoy the fellowship of old soldiers, and to receive the overflowings of an universal gratitude.

But your agitated countenances and your heaving breasts inform me that even this is not an unmixed joy. I perceive that a tumult of contending feelings rushes upon you. The images of the dead, as well as the persons of the living, throng to your embraces. The scene overwhelms you, and I turn from it. May the Father of all mercies smile upon your declining years, and bless them! And when you shall here have exchanged your embraces; when you shall once more have pressed the hands which have been so often extended to give succour in adversity, or grasped in the exultation of victory; then look abroad into this lovely land, which your young valor defended, and mark the happiness with which it is filled; yea, look abroad into the whole earth, and see what a name you have contributed to give to your country, and what a praise you have added to freedom, and then rejoice in the sympathy and gratitude, which beam upon your last days from the improved condition of mankind.

The occasion does not require of me any particular account of the battle of the 17th of June, nor any detailed narrative of the events which immediately preceded it. These are familiarly known to all. In the progress of the great and interesting controversy, Massachusetts and the town of Boston had become early and marked objects of the displeasure of the British Parliament. This had been manifested, in the Act for altering the Government of the Province, and in that for shutting up the Port of Boston. Nothing sheds more honor on our early history, and nothing better shows how little the feelings and sentiments of the colonies were known or regarded in England, than the impression which these measures everywhere produced in America. It had been anticipated, that while the other colonies would be terrified by the severity of the punishment inflicted on Massachusetts, the other seaports would be governed by a mere spirit of gain; and that, as Boston was now cut off from all commerce, the unexpected advantage, which this blow on her was calculated to confer on other towns, would be greedily enjoyed. How miserably such reasoners deceived themselves! How little they knew of the depth, and the strength, and the intenseness of that feeling of resistance to illegal acts of power, which possessed the whole American people! Everywhere the unworthy boon was rejected with scorn. The fortunate occasion was seized, everywhere, to show to the whole world, that the colonies were swayed by no local interest, no partial interest, no selfish interest. The tempt-

ation to profit by the punishment of Boston was strongest to our neighbours of Salem. Yet Salem was precisely the place, where this miserable proffer was spurned, in a tone of the most lofty self-respect, and the most indignant patriotism. "We are deeply affected," said its inhabitants, "with the sense of our public calamities; but the miseries that are now rapidly hastening on our brethren in the capital of the Province, greatly excite our commiseration. By shutting up the port of Boston, some imagine that the course of trade might be turned hither and to our benefit; but we must be dead to every idea of justice, lost to all feelings of humanity, could we indulge a thought to seize on wealth, and raise our fortunes on the ruin of our suffering neighbours." These noble sentiments were not confined to our immediate vicinity. In that day of general affection and brotherhood, the blow given to Boston smote on every patriotic heart, from one end of the country to the other Virginia and the Carolinas, as well as Connecticut and New Hampshire, felt and proclaimed the cause to be their own. The Continental Congress, then holding its first session in Philadelphia, expressed its sympathy for the suffering inhabitants of Boston, and addresses were received from all quarters, assuring them that the cause was a common one, and should be met by common efforts and common sacrifices. The Congress of Massachusetts responded to these assurances; and in an address to the Congress at Philadelphia, bearing the official signature, perhaps among the last, of the immortal Warren, notwithstanding the severity of its suffering and the magnitude of the dangers which threatened it, it was declared, that this colony "is ready, at all times, to spend and to be spent in the cause of America."

But the hour drew nigh, which was to put professions to the proof, and to determine whether the authors of these mutual pledges were ready to seal them in blood. The tidings of Lexington and Concord had no sooner spread, than it was universally felt, that the time was at last come for action. A spirit pervaded all ranks, not transient, not boisterous, but deep, solemn, determined,

"totamque infusa per artus
Mens agitat molem, et magno se corpore miscet."

War, on their own soil and at their own doors, was, indeed, a strange work to the yeomanry of New England; but their consciences were convinced of its necessity, their country called them to it, and they did not withhold themselves from the perilous trial. The ordinary occupations of life were abandoned; the plough was staid in the unfinished furrow; wives gave up their husbands, and mothers gave up their sons, to the battles of a civil war. Death might come, in honor, on the field; it might come, in disgrace, on the scaffold. For either and for both they were prepared. The sentiment of Quincy was full in their hearts. "Blandishments," said that distinguished son of genius and patriotism, "will not fascinate us, nor will threats of a halter intimidate; for, under God, we are determined, that wheresoever, whensoever, or howsoever we shall be called to make our exit, we will die free men."

The 17th of June saw the four New England colonies standing here, side by side, to triumph or to fall together; and there was with

them from that moment to the end of the war, what I hope will remain with them forever, one cause, one country, one heart.

The battle of Bunker Hill was attended with the most important effects beyond its immediate result as a military engagement. It created at once a state of open, public war. There could now be no longer a question of proceeding against individuals, as guilty of treason or rebellion. That fearful crisis was past. The appeal now lay to the sword, and the only question was, whether the spirit and the resources of the people would hold out, till the object should be accomplished. Nor were its general consequences confined to our own country. The previous proceedings of the colonies, their appeals, resolutions, and addresses, had made their cause known to Europe. Without boasting, we may say, that in no age or country, has the public cause been maintained with more force of argument, more power of illustration, or more of that persuasion which excited feeling and elevated principle can alone bestow, than the revolutionary state papers exhibit. These papers will forever deserve to be studied, not only for the spirit which they breathe, but for the ability with which they were written.

To this able vindication of their cause, the colonies had now added a practical and severe proof of their own true devotion to it, and evidence also of the power which they could bring to its support. All now saw, that if America fell, she would not fall without a struggle. Men felt sympathy and regard, as well as surprise, when they beheld these infant states, remote, unknown, unaided, encounter the power of England, and in the first considerable battle, leave more of their enemies dead on the field, in proportion to the number of combatants, than they had recently known in the wars of Europe.

Information of these events, circulating through Europe, at length reached the ears of one who now hears me. He has not forgotten the emotion, which the fame of Bunker Hill, and the name of Warren, excited in his youthful breast.

Sir, we are assembled to commemorate the establishment of great public principles of liberty, and to do honor to the distinguished dead. The occasion is too severe for eulogy to the living. But, sir, your interesting relation to this country, the peculiar circumstances which surround you and surround us, call on me to express the happiness which we derive from your presence and aid in this solemn commemoration.

Fortunate, fortunate man! with what measure of devotion will you not thank God, for the circumstances of your extraordinary life! You are connected with both hemispheres and with two generations. Heaven saw fit to ordain, that the electric spark of Liberty should be conducted, through you, from the new world to the old; and we, who are now here to perform this duty of patriotism, have all of us long ago received it in charge from our fathers to cherish your name and your virtues. You will account it an instance of your good fortune, sir, that you crossed the seas to visit us at a time which enables you to be present at this solemnity. You now behold the field, the renown of which reached you in the heart of France, and caused a thrill in your ardent bosom. You see the lines of the little

redoubt thrown up by the incredible diligence of Prescott; defended, to the last extremity, by his lion-hearted valor; and within which the corner stone of our monument has now taken its position. You see where Warren fell, and where Parker, Gardner, McCleary, Moore, and other early patriots fell with him. Those who survived that day, and whose lives have been prolonged to the present hour, are now around you. Some of them you have known in the trying scenes of the war. Behold! they now stretch forth their feeble arms to embrace you. Behold! they raise their trembling voices to invoke the blessing of God on you, and yours, forever.

Sir, you have assisted us in laying the foundation of this edifice. You have heard us rehearse, with our feeble commendation, the names of departed patriots. Sir, monuments and eulogy belong to the dead. We give them, this day, to Warren and his associates. On other occasions they have been given to your more immediate companions in arms, to Washington, to Greene, to Gates, Sullivan, and Lincoln. Sir, we have become reluctant to grant these, our highest and last honors, further. We would gladly hold them yet back from the little remnant of that immortal band. *Serus in cœlum redeas.* Illustrious as are your merits, yet far, oh, very far distant be the day, when any inscription shall bear your name, or any tongue pronounce its eulogy!

The leading reflection, to which this occasion seems to invite us, respects the great changes which have happened in the fifty years, since the battle of Bunker Hill was fought. And it peculiarly marks the character of the present age, that, in looking at these changes, and in estimating their effect on our condition, we are obliged to consider, not what has been done in our own country only, but in others also. In these interesting times, while nations are making separate and individual advances in improvement, they make, too, a common progress; like vessels on a common tide, propelled by the gales at different rates, according to their several structure and management, but all moved forward by one mighty current beneath, strong enough to bear onward whatever does not sink beneath it.

A chief distinction of the present day is a community of opinions and knowledge amongst men, in different nations, existing in a degree heretofore unknown. Knowledge has, in our time, triumphed, and is triumphing, over distance, over difference of languages, over diversity of habits, over prejudice, and over bigotry. The civilized and Christian world is fast learning the great lesson, that difference of nation does not imply necessary hostility, and that all contact need not be war. The whole world is becoming a common field for intellect to act in. Energy of mind, genius, power, wheresoever it exists, may speak out in any tongue, and the *world* will hear it. A great chord of sentiment and feeling runs through two continents, and vibrates over both. Every breeze wafts intelligence from country to country; every wave rolls it; all give it forth, and all in turn receive it. There is a vast commerce of ideas; there are marts and exchanges for intellectual discoveries, and a wonderful fellowship of those individual intelligences which make up the mind and opinion of the age. Mind is the great lever of all things; human thought is

the process by which human ends are ultimately answered; and the diffusion of knowledge, so astonishing in the last half century, has rendered innumerable minds, variously gifted by nature, competent to be competitors, or fellow-workers, on the theatre of intellectual operation.

From these causes, important improvements have taken place in the personal condition of individuals. Generally speaking, mankind are not only better fed, and better clothed, but they are able also to enjoy more leisure; they possess more refinement and more self-respect. A superior tone of education, manners, and habits prevails. This remark, most true in its application to our own country, is also partly true, when applied elsewhere. It is proved by the vastly augmented consumption of those articles of manufacture and of commerce, which contribute to the comforts and the decencies of life; an augmentation which has far outrun the progress of population. And while the unexampled and almost incredible use of machinery would seem to supply the place of labor, labor still finds its occupation and its reward; so wisely has Providence adjusted men's wants and desires to their condition and their capacity.

Any adequate survey, however, of the progress made in the last half century, in the polite and the mechanic arts, in machinery and manufactures, in commerce and agriculture, in letters and in science, would require volumes. I must abstain wholly from these subjects, and turn, for a moment, to the contemplation of what has been done on the great question of politics and government. This is the master topic of the age; and during the whole fifty years, it has intensely occupied the thoughts of men. The nature of civil government, its ends and uses, have been canvassed and investigated; ancient opinions attacked and defended; new ideas recommended and resisted, by whatever power the mind of man could bring to the controversy. From the closet and the public halls the debate has been transferred to the field; and the world has been shaken by wars of unexampled magnitude, and the greatest variety of fortune. A day of peace has at length succeeded; and now that the strife has subsided, and the smoke cleared away, we may begin to see what has actually been done, permanently changing the state and condition of human society. And without dwelling on particular circumstances, it is most apparent, that, from the beforementioned causes of augmented knowledge and improved individual condition, a real, substantial, and important change has taken place, and is taking place, greatly beneficial, on the whole, to human liberty and human happiness.

The great wheel of political revolution began to move in America. Here its rotation was guarded, regular, and safe. Transferred to the other continent, from unfortunate but natural causes, it received an irregular and violent impulse; it whirled along with a fearful celerity; till at length, like the chariot wheels in the races of antiquity, it took fire from the rapidity of its own motion, and blazed onward, spreading conflagration and terror around.

We learn from the result of this experiment, how fortunate was our own condition, and how admirably the character of our people was calculated for making the great example of popular govern-

ments. The possession of power did not turn the heads of the American people, for they had long been in the habit of exercising a great portion of self-control. Although the paramount authority of the parent state existed over them, yet a large field of legislation had always been open to our colonial assemblies. They were accustomed to representative bodies and the forms of free government; they understood the doctrine of the division of power among different branches, and the necessity of checks on each. The character of our countrymen, moreover, was sober, moral, and religious; and there was little in the change to shock their feelings of justice and humanity, or even to disturb an honest prejudice. We had no domestic throne to overturn, no privileged orders to cast down, no violent changes of property to encounter. In the American Revolution, no man sought or wished for more than to defend and enjoy his own. None hoped for plunder or for spoil. Rapacity was unknown to it; the axe was not among the instruments of its accomplishment; and we all know that it could not have lived a single day under any well founded imputation of possessing a tendency adverse to the Christian religion.

It need not surprise us, that, under circumstances less auspicious, political revolutions elsewhere, even when well intended, have terminated differently. It is, indeed, a great achievement, it is the master work of the world, to establish governments entirely popular, on lasting foundations; nor is it easy, indeed, to introduce the popular principle at all, into governments to which it has been altogether a stranger. It cannot be doubted, however, that Europe has come out of the contest, in which she has been so long engaged, with greatly superior knowledge, and, in many respects, a highly improved condition. Whatever benefit has been acquired, is likely to be retained, for it consists mainly in the acquisition of more enlightened ideas. And although kingdoms and provinces may be wrested from the hands that hold them, in the same manner they were obtained; although ordinary and vulgar power may, in human affairs, be lost as it has been won; yet it is the glorious prerogative of the empire of knowledge, that what it gains it never loses. On the contrary, it increases by the multiple of its own power; all its ends become means; all its attainments, helps to new conquests. Its whole abundant harvest is but so much seed wheat, and nothing has ascertained, and nothing can ascertain, the amount of ultimate product.

Under the influence of this rapidly increasing knowledge, the people have begun, in all forms of government, to think, and to reason, on affairs of state. Regarding government as an institution for the public good, they demand a knowledge of its operations, and a participation in its exercise. A call for the representative system, wherever it is not enjoyed, and where there is already intelligence enough to estimate its value, is perseveringly made. Where men may speak out, they demand it; where the bayonet is at their throats, they pray for it.

When Louis XIV. said, "I am the state," he expressed the essence of the doctrine of unlimited power. By the rules of that system, the people are disconnected from the state; they are its sub-

jects; it is their lord. These ideas, founded in the love of power, and long supported by the excess and the abuse of it, are yielding, in our age, to other opinions; and the civilized world seems at last to be proceeding to the conviction of that fundamental and manifest truth, that the powers of government are but a trust, and that they cannot be lawfully exercised but for the good of the community. As knowledge is more and more extended, this conviction becomes more and more general. Knowledge, in truth, is the great sun in the firmament. Life and power are scattered with all its beams. The prayer of the Grecian combatant, when enveloped in unnatural clouds and darkness, is the appropriate political supplication for the people of every country not yet blessed with free institutions;

> 'Dispel this cloud, the light of heaven restore,
> Give me TO SEE—and Ajax asks no more.'

We may hope, that the growing influence of enlightened sentiments will promote the permanent peace of the world. Wars, to maintain family alliances, to uphold or to cast down dynasties, to regulate successions to thrones, which have occupied so much room in the history of modern times, if not less likely to happen at all, will be less likely to become general and involve many nations, as the great principle shall be more and more established, that the interest of the world is peace, and its first great statute, that every nation possesses the power of establishing a government for itself But public opinion has attained also an influence over governments, which do not admit the popular principle into their organization. A necessary respect for the judgment of the world operates, in some measure, as a control over the most unlimited forms of authority. It is owing, perhaps, to this truth, that the interesting struggle of the Greeks has been suffered to go on so long, without a direct interference, either to wrest that country from its present masters, and add it to other powers, or to execute the system of pacification by force, and, with united strength, lay the neck of Christian and civilized Greece at the foot of the barbarian Turk. Let us thank God that we live in an age, when something has influence besides the bayonet, and when the sternest authority does not venture to encounter the scorching power of public reproach. Any attempt of the kind I have mentioned, should be met by one universal burst of indignation; the air of the civilized world ought to be made too warm to be comfortably breathed by any who would hazard it.

It is, indeed, a touching reflection, that while, in the fulness of our country's happiness, we rear this monument to her honor, we look for instruction, in our undertaking, to a country which is now in fearful contest, not for works of art or memorials of glory, but for her own existence. Let her be assured, that she is not forgotten in the world; that her efforts are applauded, and that constant prayers ascend for her success. And let us cherish a confident hope for her final triumph. If the true spark of religious and civil liberty be kindled, it will burn. Human agency cannot extinguish it. Like the earth's central fire it may be smothered for a time; the ocean may overwhelm it; mountains may press it down; but its inherent and unconquerable force will heave both the ocean and the

land, and at sometime or another, in some place or another, the volcano will break out and flame up to heaven.

Among the great events of the half century, we must reckon, certainly, the Revolution of South America; and we are not likely to overrate the importance of that Revolution, either to the people of the country itself or to the rest of the world. The late Spanish colonies, now independent states, under circumstances less favorable, doubtless, than attended our own Revolution, have yet successfully commenced their national existence. They have accomplished the great object of establishing their independence; they are known and acknowledged in the world; and although in regard to their systems of government, their sentiments on religious toleration, and their provisions for public instruction, they may have yet much to learn, it must be admitted that they have risen to the condition of settled and established states, more rapidly than could have been reasonably anticipated. They already furnish an exhilarating example of the difference between free governments and despotic misrule. Their commerce, at this moment, creates a new activity in all the great marts of the world. They show themselves able, by an exchange of commodities, to bear an useful part in the intercourse of nations.

A new spirit of enterprise and industry begins to prevail; all the great interests of society receive a salutary impulse; and the progress of information not only testifies to an improved condition, but constitutes, itself, the highest and most essential improvement.

When the battle of Bunker Hill was fought, the existence of South America was scarcely felt in the civilized world. The thirteen little colonies of North America habitually called themselves the "Continent." Borne down by colonial subjugation, monopoly, and bigotry, these vast regions of the South were hardly visible above the horizon. But in our day there hath been, as it were, a new creation. The Southern Hemisphere emerges from the sea. Its lofty mountains begin to lift themselves into the light of heaven; its broad and fertile plains stretch out, in beauty, to the eye of civilized man, and at the mighty bidding of the voice of political liberty the waters of darkness retire.

And, now, let us indulge an honest exultation in the conviction of the benefit, which the example of our country has produced, and is likely to produce, on human freedom and human happiness. And let us endeavour to comprehend, in all its magnitude, and to feel, in all its importance, the part assigned to us in the great drama of human affairs. We are placed at the head of the system of representative and popular governments. Thus far our example shows, that such governments are compatible, not only with respectability and power, but with repose, with peace, with security of personal rights, with good laws, and a just administration.

We are not propagandists. Wherever other systems are preferred, either as being thought better in themselves, or as better suited to existing condition, we leave the preference to be enjoyed. Our history hitherto proves, however, that the popular form is practicable, and that with wisdom and knowledge men may govern themselves; and the duty incumbent on us is, to preserve the consistency of this

cheering example, and take care that nothing may weaken its authority with the world. If, in our case, the Representative system ultimately fail, popular governments must be pronounced impossible. No combination of circumstances more favorable to the experiment can ever be expected to occur. The last hopes of mankind, therefore, rest with us; and if it should be proclaimed, that our example had become an argument against the experiment, the knell of popular liberty would be sounded throughout the earth.

These are excitements to duty; but they are not suggestions of doubt. Our history and our condition, all that is gone before us, and all that surrounds us, authorise the belief, that popular governments, though subject to occasional variations, perhaps not always for the better, in form, may yet, in their general character, be as durable and permanent as other systems. We know, indeed, that, in our country, any other is impossible. The *Principle* of Free Governments adheres to the American soil. It is bedded in it; immovable as its mountains.

And let the sacred obligations which have devolved on this generation, and on us, sink deep into our hearts. Those are daily dropping from among us, who established our liberty and our government. The great trust now descends to new hands. Let us apply ourselves to that which is presented to us, as our appropriate object. We can win no laurels in a war for Independence. Earlier and worthier hands have gathered them all. Nor are there places for us by the side of Solon, and Alfred, and other founders of states. Our fathers have filled them. But there remains to us a great duty of defence and preservation; and there is opened to us, also, a noble pursuit, to which the spirit of the times strongly invites us. Our proper business is improvement. Let our age be the age of improvement. In a day of peace, let us advance the arts of peace and the works of peace. Let us develope the resources of our land, call forth its powers, build up its institutions, promote all its great interests, and see whether we also, in our day and generation, may not perform something worthy to be remembered. Let us cultivate a true spirit of union and harmony. In pursuing the great objects, which our condition points out to us, let us act under a settled conviction, and an habitual feeling, that these twenty-four states are one country. Let our conceptions be enlarged to the circle of our duties. Let us extend our ideas over the whole of the vast field in which we are called to act. Let our object be, OUR COUNTRY, OUR WHOLE COUNTRY, AND NOTHING BUT OUR COUNTRY. And, by the blessing of God, may that country itself become a vast and splendid Monument, not of oppression and terror, but of Wisdom, of Peace, and of Liberty, upon which the world may gaze, with admiration, forever!

DISCOURSE

IN COMMEMORATION OF THE LIVES AND SERVICES OF JOHN ADAMS AND THOMAS JEFFERSON, DELIVERED IN FANEUIL HALL, BOSTON. AUGUST 2, 1826.

THIS is an unaccustomed spectacle. For the first time, fellow citizens, badges of mourning shroud the columns and overhang the arches of this Hall. These walls, which were consecrated, so long ago, to the cause of American liberty, which witnessed her infant struggles, and rung with the shouts of her earliest victories, proclaim, now, that distinguished friends and champions of that great cause have fallen. It is right that it should be thus. The tears which flow, and the honors that are paid, when the Founders of the Republic die, give hope that the Republic itself may be immortal. It is fit, that by public assembly and solemn observance, by anthem and by eulogy, we commemorate the services of national benefactors, extol their virtues, and render thanks to God for eminent blessings, early given and long continued, to our favored country.

ADAMS and JEFFERSON are no more; and we are assembled, fellow citizens, the aged, the middle aged and the young, by the spontaneous impulse of all, under the authority of the municipal government, with the presence of the chief magistrate of the Commonwealth, and others its official representatives, the university, and the learned societies, to bear our part, in those manifestations of respect and gratitude which universally pervade the land. ADAMS and JEFFERSON are no more. On our fiftieth anniversary, the great day of National Jubilee, in the very hour of public rejoicing, in the midst of echoing and reechoing voices of thanksgiving, while their own names were on all tongues, they took their flight, together, to the world of spirits.

If it be true that no one can safely be pronounced happy while he lives; if that event which terminates life can alone crown its honors and its glory, what felicity is here! The great Epic of their lives, how happily concluded! Poetry itself has hardly closed illustrious lives, and finished the career of earthly renown, by such a consummation. If we had the power, we could not wish to reverse this dispensation of the Divine Providence. The great objects of life were accomplished, the drama was ready to be closed; it has closed;

our patriots have fallen; but so fallen, at such age, with such coincidence, on such a day, that we cannot rationally lament that that end has come, which we knew could not be long deferred.

Neither of these great men, fellow citizens, could have died, at any time, without leaving an immense void in our American society. They have been so intimately, and for so long a time, blended with the history of the country, and especially so united, in our thoughts and recollections, with the events of the Revolution, that the death of either would have touched the strings of public sympathy. We should have felt that one great link, connecting us with former times, was broken; that we had lost something more, as it were, of the presence of the Revolution itself, and of the act of independence, and were driven on, by another great remove, from the days of our country's early distinction, to meet posterity, and to mix with the future. Like the mariner, whom the ocean and the winds carry along, till he sees the stars which have directed his course, and lighted his pathless way, descend, one by one, beneath the rising horizon, we should have felt that the stream of time had borne us onward, till another great luminary, whose light had cheered us, and whose guidance we had followed, had sunk away from our sight.

But the concurrence of their death, on the anniversary of Independence, has naturally awakened stronger emotions. Both had been presidents, both had lived to great age, both were early patriots, and both were distinguished and ever honored by their immediate agency in the act of independence. It cannot but seem striking, and extraordinary; that these two should live to see the fiftieth year from the date of that act; that they should complete that year; and that then, on the day which had fast linked forever their own fame with their country's glory, the heavens should open to receive them both at once. As their lives themselves were the gifts of Providence, who is not willing to recognise in their happy termination, as well as in their long continuance, proofs that our country, and its benefactors, are objects of His care?

Adams and Jefferson, I have said, are no more. As human beings, indeed, they are no more. They are no more, as in 1776, bold and fearless advocates of independence; no more as on subsequent periods, the head of the government; no more as we have recently seen them, aged and venerable objects of admiration and regard. They are no more. They are dead. But how little is there, of the great and good, which can die! To their country they yet live, and live forever. They live in all that perpetuates the remembrance of men on earth; in the recorded proofs of their own great actions, in the offspring of their intellect, in the deep engraved lines of public gratitude, and in the respect and homage of mankind. They live in their example; and they live, emphatically, and will live in the influence which their lives and efforts, their principles and opinions, now exercise, and will continue to exercise, on the affairs of men, not only in their own country, but throughout the civilized world. A superior and commanding human intellect, a truly great man, when Heaven vouchsafes so rare a gift, is not a temporary flame, burning bright for a while, and then expiring, giving place to returning darkness. It is rather a spark of fervent

heat, as well as radiant light, with power to enkindle the common mass of human mind; so that when it glimmers, in its own decay, and finally goes out in death, no night follows, but it leaves the world all light, all on fire, from the potent contact of its own spirit. Bacon died; but the human understanding, roused, by the touch of his miraculous wand, to a perception of the true philosophy, and the just mode of inquiring after truth, has kept on its course, successfully and gloriously. Newton died; yet the courses of the spheres are still known, and they yet move on, in the orbits which he saw, and described for them, in the infinity of space.

No two men now live, fellow citizens, perhaps it may be doubted, whether any two men have ever lived, in one age, who, more than those we now commemorate, have impressed their own sentiments, in regard to politics and government, on mankind, infused their own opinions more deeply into the opinions of others, or given a more lasting direction to the current of human thought. Their work doth not perish with them. The tree which they assisted to plant, will flourish, although they water it and protect it no longer; for it has struck its roots deep, it has sent them to the very centre; no storm, not of force to burst the orb, can overturn it; its branches spread wide; they stretch their protecting arms broader and broader, and its top is destined to reach the heavens. We are not deceived. There is no delusion here. No age will come, in which the American Revolution will appear less than it is, one of the greatest events in human history. No age will come, in which it will cease to be seen and felt, on either continent, that a mighty step, a great advance, not only in American affairs, but in human affairs, was made on the 4th of July 1776. And no age will come, we trust, so ignorant or so unjust, as not to see and acknowledge the efficient agency of these we now honor, in producing that momentous event.

We are not assembled, therefore, fellow citizens, as men overwhelmed with calamity by the sudden disruption of the ties of friendship or affection, or as in despair for the Republic, by the untimely blighting of its hopes. Death has not surprised us by an unseasonable blow. We have, indeed, seen the tomb close, but it has closed only over mature years, over long protracted public service, over the weakness of age, and over life itself only when the ends of living had been fulfilled. These suns, as they rose slowly, and steadily, amidst clouds and storms, in their ascendant, so they have not rushed from their meridian, to sink suddenly in the west. Like the mildness, the serenity, the continuing benignity of a summer's day, they have gone down with slow descending, grateful, long lingering light; and now that they are beyond the visible margin of the world, good omens cheer us from "the bright track of their fiery car!"

There were many points of similarity in the lives and fortunes of these great men. They belonged to the same profession, and had pursued its studies and its practice, for unequal lengths of time indeed, but with diligence and effect. Both were learned and able lawyers. They were natives and inhabitants, respectively, of those two of the colonies, which, at the revolution, were the largest and most powerful, and which naturally had a lead in the political affairs of the times.

When the colonies became, in some degree, united, by the assembling of a general congress, they were brought to act together, in its deliberations, not indeed at the same time, but both at early periods. Each had already manifested his attachment to the cause of the country, as well as his ability to maintain it, by printed addresses, public speeches, extensive correspondence, and whatever other mode could be adopted, for the purpose of exposing the encroachments of the British parliament and animating the people to a manly resistance. Both were not only decided, but early friends of Independence. While others yet doubted, they were resolved; where others hesitated, they pressed forward. They were both members of the committee for preparing the Declaration of Independence, and they constituted the sub-committee, appointed by the other members to make the draught. They left their seats in congress, being called to other public employments, at periods not remote from each other, although one of them returned to it, afterwards, for a short time. Neither of them was of the assembly of great men which formed the present constitution, and neither was at any time member of congress under its provisions. Both have been public ministers abroad, both vice-presidents, and both presidents. These coincidences are now singularly crowned and completed. They have died, together; and they died on the anniversary of liberty.

When many of us were last in this place, fellow citizens, it was on the day of that anniversary. We were met to enjoy the festivities belonging to the occasion, and to manifest our grateful homage to our political fathers.

We did not, we could not here, forget our venerable neighbour of Quincy. We knew that we were standing, at a time of high and palmy prosperity, where he had stood, in the hour of utmost peril; that we saw nothing but liberty and security, where he had met the frown of power; that we were enjoying everything, where he had hazarded everything; and just and sincere plaudits rose to his name, from the crowds which filled this area, and hung over these galleries. He whose grateful duty it was to speak to us, on that day, of the virtues of our fathers had, indeed, admonished us that time and years were about to level his venerable frame with the dust. But he bade us hope, that "the sound of a nation's joy, rushing from our cities, ringing from our valleys, echoing from our hills, might yet break the silence of his aged ear; that the rising blessings of grateful millions might yet visit, with glad light, his decaying vision." Alas! that vision was then closing forever. Alas! the silence which was then settling on that aged ear, was an everlasting silence! For, lo! in the very moment of our festivities, his freed spirit ascended to God who gave it! Human aid and human solace terminate at the grave; or we would gladly have borne him upward, on a nation's outspread hands; we would have accompanied him, and with the blessings of millions and the prayers of millions, commended him to the Divine favor.

While still indulging our thoughts on the coincidence of the death of this venerable man with the anniversary of independence, we learn that Jefferson, too, has fallen; and that these aged patriots, these illustrious fellow-laborers, had left our world together. May

not such events raise the suggestion that they are not undesigned, and that Heaven does so order things, as sometimes to attract strongly the attention, and excite the thoughts of men? The occurrence has added new interest to our anniversary and will be remembered, in all time to come.

The occasion, fellow citizens, requires some account of the lives and services of JOHN ADAMS and THOMAS JEFFERSON. This duty must necessarily be performed with great brevity, and in the discharge of it I shall be obliged to confine myself, principally, to those parts of their history and character which belonged to them as public men.

JOHN ADAMS was born at Quincy, then part of the ancient town of Braintree, on the 19th day of October (Old Style) 1735. He was a descendant of the Puritans, his ancestors having early emigrated from England, and settled in Massachusetts. Discovering early a strong love of reading and of knowledge, together with marks of great strength and activity of mind, proper care was taken by his worthy father, to provide for his education. He pursued his youthful studies in Braintree, under Mr. Marsh, a teacher whose fortune it was that Josiah Quincy, Jr. as well as the subject of these remarks, should receive from him his instruction in the rudiments of classical literature. Having been admitted, in 1751, a member of Harvard College, MR. ADAMS was graduated, in course, in 1755; and on the catalogue of that Institution, his name, at the time of his death, was second among the living Alumni, being preceded only by that of the venerable Holyoke. With what degree of reputation he left the University, is not now precisely known. We know only that he was distinguished, in a class which numbered Locke and Hemenway among its members. Choosing the law for his profession, he commenced and prosecuted its studies at Worcester, under the direction of Samuel Putnam, a gentleman whom he has himself described as an acute man, an able and learned lawyer, and as in large professional practice at that time. In 1758, he was admitted to the bar, and commenced business in Braintree. He is understood to have made his first considerable effort, or to have attained his first signal success, at Plymouth, on one of those occasions which furnish the earliest opportunity for distinction to many young men of the profession, a jury trial, and a criminal cause. His business naturally grew with his reputation, and his residence in the vicinity afforded the opportunity, as his growing eminence gave the power, of entering on the larger field of practice which the capital presented. In 1766, he removed his residence to Boston, still continuing his attendance on the neighbouring circuits, and not unfrequently called to remote parts of the Province. In 1770 his professional firmness was brought to a test of some severity, on the application of the British officers and soldiers to undertake their defence, on the trial of the indictments found against them on account of the transactions of the memorable 5th of March. He seems to have thought, on this occasion, that a man can no more abandon the proper duties of his profession, than he can abandon other duties. The event proved, that as he judged well for his own reputation, so he judged well, also, for the interest and permanent fame of his country.

The result of that trial proved, that notwithstanding the high degree of excitement then existing, in consequence of the measures of the British government, a jury of Massachusetts would not deprive the most reckless enemies, even the officers of that standing army, quartered among them, which they so perfectly abhorred, of any part of that protection which the law, in its mildest and most indulgent interpretation, afforded to persons accused of crimes.

Without pursuing Mr. Adams's professional course further, suffice it to say, that on the first establishment of the judicial tribunals under the authority of the State, in 1776, he received an offer of the high and responsible station of Chief Justice of the Supreme Court. But he was destined for another and a different career. From early life the bent of his mind was toward politics; a propensity, which the state of the times, if it did not create, doubtless very much strengthened. Public subjects must have occupied the thoughts and filled up the conversation in the circles in which he then moved; and the interesting questions, at that time just arising, could not but seize on a mind, like his, ardent, sanguine and patriotic. The letter, fortunately preserved, written by him at Worcester so early as the 12th of October, 1755, is a proof of very comprehensive views, and uncommon depth of reflection, in a young man not yet quite twenty. In this letter he predicted the transfer of power, and the establishment of a new seat of empire in America; he predicted, also, the increase of population in the colonies; and anticipated their naval distinction, and foretold that all Europe, combined, could not subdue them. All this is said, not on a public occasion, or for effect, but in the style of sober and friendly correspondence, as the result of his own thoughts. "I sometimes retire," said he, at the close of the letter, "and laying things together form some reflections pleasing to myself. The produce of one of these reveries you have read above."* This prognostication, so early in his own life, so early in the history of the country, of independence, of vast increase of numbers, of naval force, of such augmented power as might defy all Europe, is remarkable. It is more remarkable, that its author should live to see fulfilled to the letter, what could have seemed to others, at the time, but the extravagance of youthful fancy. His earliest political feelings were thus strongly American; and from this ardent attachment to his native soil he never departed.

While still living at Quincy, and at the age of twenty-four, Mr. Adams was present, in this town, on the argument before the Su-

* Extract of a letter written by John Adams, dated at Worcester, Massachusetts, October 12, 1755.

"Soon after the Reformation, a few people came over into this new world, for conscience sake. Perhaps this apparently trivial incident may transfer the great seat of empire into America. It looks likely to me; for, if we can remove the turbulent Gallics, our people, according to the exactest computations, will in another century, become more numerous than England itself. Should this be the case, since we have, I may say, all the naval stores of the nation in our hands, it will be easy to obtain a mastery of the seas; and then the united force of all Europe will not be able to subdue us. The only way to keep us from setting up for ourselves is to disunite us.

"Be not surprised that I am turned politician. This whole town is immersed in politics. The interests of nations, and all the dira of war, make the subject of every conversation. I sit and hear, and after having been led through a maze of sage observations, I sometimes retire, and laying things together, form some reflections pleasing to myself. The produce of one of these reveries you have read above."

preme Court respecting *Writs of Assistance*, and heard the celebrated and patriotic speech of James Otis. Unquestionably, that was a masterly performance. No flighty declamation about liberty, no superficial discussion of popular topics, it was a learned, penetrating, convincing, constitutional argument, expressed in a strain of high and resolute patriotism. He grasped the question, then pending between England and her Colonies, with the strength of a lion; and if he sometimes sported, it was only because the lion himself is sometimes playful. Its success appears to have been as great as its merits, and its impression was widely felt. Mr. Adams himself seems never to have lost the feeling it produced, and to have entertained constantly the fullest conviction of its important effects. "I do say," he observes, "in the most solemn manner, that Mr. Otis's Oration against Writs of Assistance, breathed into this nation the breath of life."

In 1765 Mr. Adams laid before the public, what I suppose to be his first printed performance, except essays for the periodical press, a Dissertation on the Canon and Feudal Law. The object of this work was to show that our New England ancestors, in consenting to exile themselves from their native land, were actuated, mainly, by the desire of delivering themselves from the power of the hierarchy, and from the monarchical and aristocratical political systems of the other continent; and to make this truth bear, with effect, on the politics of the times. Its tone is uncommonly bold and animated, for that period. He calls on the people, not only to defend, but to study and understand their rights and privileges; urges earnestly the necessity of diffusing general knowledge, invokes the clergy and the bar, the colleges and academies, and all others who have the ability and the means, to expose the insidious designs of arbitrary power, to resist its approaches, and to be persuaded that there is a settled design on foot to enslave all America. "Be it remembered," says the author, "that liberty must, at all hazards, be supported. We have a right to it, derived from our Maker. But if we had not, our fathers have earned it, and bought it for us, at the expense of their ease, their estate, their pleasure and their blood. And liberty cannot be preserved without a general knowledge among the people, who have a right, from the frame of their nature, to knowledge, as their great Creator, who does nothing in vain, has given them understandings, and a desire to know; but besides this, they have a right, an indisputable, unalienable, indefeasible right to that most dreaded and envied kind of knowledge, I mean of the character and conduct of their rulers. Rulers are no more than attorneys, agents, and trustees of the people; and if the cause, the interest and trust, is insidiously betrayed, or wantonly trifled away, the people have a right to revoke the authority, that they themselves have deputed, and to constitute other and better agents, attorneys and trustees."

The citizens of this town conferred on Mr. Adams his first political distinction, and clothed him with his first political trust, by electing him one of their representatives, in 1770. Before this time he had become extensively known throughout the province, as well by the part he had acted in relation to public affairs, as

by the exercise of his professional ability. He was among those who took the deepest interest in the controversy with England, and whether in or out of the Legislature, his time and talents were alike devoted to the cause. In the years 1773 and 1774 he was chosen a counsellor, by the members of the General Court, but rejected by Governor Hutchinson, in the former of those years, and by Governor Gage in the latter.

The time was now at hand, however, when the affairs of the colonies urgently demanded united councils. An open rupture with the parent State appeared inevitable, and it was but the dictate of prudence, that those who were united by a common interest and a common danger, should protect that interest and guard against that danger, by united efforts. A general Congress of Delegates from all the colonies, having been proposed and agreed to, the House of Representatives, on the 17th of June 1774, elected James Bowdoin, Thomas Cushing, Samuel Adams, John Adams, and Robert Treat Paine, delegates from Massachusetts. This appointment was made at Salem, where the General Court had been convened by Governor Gage, in the last hour of the existence of a House of Representatives under the provincial Charter. While engaged in this important business, the governor having been informed of what was passing, sent his secretary with a message dissolving the General Court. The secretary finding the door locked, directed the messenger to go in and inform the speaker that the secretary was at the door with a message from the governor. The messenger returned, and informed the secretary that the orders of the House were that the doors should be kept fast; whereupon the secretary soon after read a proclamation, dissolving the General Court upon the stairs. Thus terminated, forever, the actual exercise of the political power of England in or over Massachusetts. The four last named delegates accepted their appointments, and took their seats in Congress, the first day of its meeting, September 5, 1774, in Philadelphia.

The proceedings of the first Congress are well known, and have been universally admired. It is in vain that we would look for superior proofs of wisdom, talent, and patriotism. Lord Chatham said, that for himself, he must declare, that he had studied and admired the free states of antiquity, the master states of the world, but that for solidity of reasoning, force of sagacity, and wisdom of conclusion, no body of men could stand in preference to this Congress. It is hardly inferior praise to say, that no production of that great man himself can be pronounced superior to several of the papers published as the proceedings of this most able, most firm, most patriotic assembly. There is, indeed, nothing superior to them in the range of political disquisition. They not only embrace, illustrate, and enforce everything which political philosophy, the love of liberty, and the spirit of free inquiry had antecedently produced, but they add new and striking views of their own, and apply the whole, with irresistible force, in support of the cause which had drawn them together.

Mr. Adams was a constant attendant on the deliberations of this body, and bore an active part in its important measures. He was

of the committee to state the rights of the colonies, and of that also which reported the address to the king.

As it was in the continental Congress, fellow citizens, that those whose deaths have given rise to this occasion, were first brought together, and called on to unite their industry and their ability, in the service of the country, let us now turn to the other of these distinguished men, and take a brief notice of his life, up to the period when he appeared within the walls of Congress.

Thomas Jefferson, descended from ancestors who had been settled in Virginia for some generations, was born near the spot on which he died, in the county of Albemarle, on the 2d of April, (Old Style,) 1743. His youthful studies were pursued in the neighbourhood of his father's residence, until he was removed to the college of William and Mary, the highest honors of which he in due time received. Having left the college with reputation, he applied himself to the study of the law, under the tuition of George Wythe, one of the highest judicial names of which that State can boast. At an early age he was elected a member of the Legislature, in which he had no sooner appeared than he distinguished himself, by knowledge, capacity, and promptitude.

Mr. Jefferson appears to have been imbued with an early love of letters and science, and to have cherished a strong disposition to pursue these objects. To the physical sciences, especially, and to ancient classic literature, he is understood to have had a warm attachment, and never entirely to have lost sight of them, in the midst of the busiest occupations. But the times were times for action, rather than for contemplation. The country was to be defended, and to be saved, before it could be enjoyed. Philosophic leisure and literary pursuits, and even the objects of professional attention, were all necessarily postponed to the urgent calls of the public service. The exigency of the country made the same demand on Mr. Jefferson that it made on others who had the ability and the disposition to serve it; and he obeyed the call; thinking and feeling, in this respect, with the great Roman orator; *Quis enim est tam cupidus in perspicienda cognoscendaque rerum natura, ut, si ei tractanti contemplantique res cognitione dignissimas subito sit allatum periculum discrimenque patriæ, cui subvenire opitularique possit, non illa omnia relinquat atque abjiciat, etiam si dinumerare se stellas, aut metiri mundi magnitudinem posse arbitretur?*

Entering, with all his heart, into the cause of liberty, his ability, patriotism, and power with the pen naturally drew upon him a large participation in the most important concerns. Wherever he was, there was found a soul devoted to the cause, power to defend and maintain it, and willingness to incur all its hazards. In 1774 he published a Summary View of the Rights of British America, a valuable production among those intended to show the dangers which threatened the liberties of the country, and to encourage the people in their defence. In June 1775 he was elected a member of the Continental Congress, as successor to Peyton Randolph, who had retired on account of ill health, and took his seat in that body on the 21st of the same month.

And now, fellow citizens, without pursuing the biography of these illustrious men further, for the present, let us turn our attention to the most prominent act of their lives, their participation in the DECLARATION of INDEPENDENCE.

Preparatory to the introduction of that important measure, a committee, at the head of which was Mr. Adams, had reported a resolution, which Congress adopted the 10th of May, recommending, in substance, to all the colonies which had not already established governments suited to the exigencies of their affairs, *to adopt such government, as would, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.*

This significant vote was soon followed by the direct proposition, which RICHARD HENRY LEE had the honor to submit to Congress, by resolution, on the 7th day of June. The published journal does not expressly state it, but there is no doubt, I suppose, that this resolution was in the same words, when originally submitted by Mr. Lee, as when finally passed. Having been discussed, on Saturday the 8th, and Monday the 10th of June, this resolution was on the last mentioned day postponed, for further consideration, to the first day of July; and, at the same time it was voted, that a committee be appointed to prepare a DECLARATION, to the effect of the resolution. This committee was elected by ballot, on the following day, and consisted of THOMAS JEFFERSON, JOHN ADAMS, BENJAMIN FRANKLIN, ROGER SHERMAN, and ROBERT R. LIVINGSTON.

It is usual, when committees are elected by ballot, that their members are arranged, in order, according to the number of votes which each has received. Mr. Jefferson, therefore, had received the highest, and Mr. Adams the next highest number of votes. The difference is said to have been but of a single vote. Mr. Jefferson and Mr. Adams, standing thus at the head of the committee, were requested, by the other members, to act as a sub-committee, to prepare the draught; and Mr. Jefferson drew up the paper. The original draught, as brought by him from his study, and submitted to the other members of the committee, with interlineations in the handwriting of Dr. Franklin, and others in that of Mr. Adams, was in Mr. Jefferson's possession at the time of his death. The merit of this paper is Mr. Jefferson's. Some changes were made in it, on the suggestion of other members of the committee, and others by Congress while it was under discussion. But none of them altered the tone, the frame, the arrangement, or the general character of the instrument. As a composition, the declaration is Mr. Jefferson's. It is the production of his mind, and the high honor of it belongs to him, clearly and absolutely.

It has sometimes been said, as if it were a derogation from the merits of this paper, that it contains nothing new; that it only states grounds of proceeding, and presses topics of argument, which had often been stated and pressed before. But it was not the object of the declaration to produce anything new. It was not to invent reasons for independence, but to state those which governed the Congress. For great and sufficient causes, it was proposed to declare independence; and the proper business of the paper to be

drawn, was to set forth those causes, and justify the authors of the measure, in any event of fortune, to the country, and to posterity. The cause of American independence, moreover, was now to be presented to the world, in such manner, if it might so be, as to engage its sympathy, to command its respect, to attract its admiration; and in an assembly of most able and distinguished men, THOMAS JEFFERSON had the high honor of being the selected advocate of this cause. To say that he performed his great work well, would be doing him injustice. To say that he did excellently well, admirably well, would be inadequate and halting praise. Let us rather say, that he so discharged the duty assigned him, that all Americans may well rejoice that the work of drawing the title deed of their liberties devolved on his hands.

With all its merits, there are those who have thought that there was one thing in the declaration to be regretted; and that is, the asperity and apparent anger with which it speaks of the person of the king; the industrious ability with which it accumulates and charges upon him, all the injuries which the colonies had suffered from the mother country. Possibly some degree of injustice, now or hereafter, at home or abroad, may be done to the character of Mr. Jefferson, if this part of the declaration be not placed in its proper light. Anger or resentment, certainly, much less personal reproach and invective, could not properly find place, in a composition of such high dignity, and of such lofty and permanent character.

A single reflection on the original ground of dispute, between England and the colonies, is sufficient to remove any unfavorable impression, in this respect.

The inhabitants of all the colonies, while colonies, admitted themselves bound by their allegiance to the king; but they disclaimed, altogether, the authority of parliament; holding themselves, in this respect, to resemble the condition of Scotland and Ireland, before the respective unions of those kingdoms with England, when they acknowledged allegiance to the same king, but each had its separate legislature. The tie, therefore, which our revolution was to break, did not subsist between us and the British parliament, or between us and the British government, in the aggregate; but directly between us and the king himself. The colonies had never admitted themselves subject to parliament. That was precisely the point of the original controversy. They had uniformly denied that parliament had authority to make laws for them. There was, therefore, no subjection to parliament to be thrown off.* But allegiance to the king did exist, and had been uniformly acknowledged; and down

* This question, of the power of parliament over the colonies, was discussed with singular ability, by Gov. Hutchinson on the one side, and the house of representatives of Massachusetts on the other, in 1773. The argument of the House is in the form of an answer to the governor's message, and was reported by Mr. Samuel Adams, Mr. Hancock, Mr. Hawley, Mr. Bowers, Mr. Hobson, Mr. Foster, Mr. Phillips, and Mr. Thayer. As the power of the parliament had been acknowledged, so far at least as to affect us by laws of trade, it was not easy to settle the line of distinction. It was thought however to be very clear, that the charters of the colonies had exempted them from the general legislation of the British parliament. See Massachusetts State Papers, p. 351.

to 1775 the most solemn assurances had been given that it was not intended to break that allegiance, or to throw it off. Therefore, as the direct object, and only effect of the declaration, according to the principles on which the controversy had been maintained, on our part, was to sever the tie of allegiance which bound us to the king, it was properly and necessarily founded on acts of the crown itself, as its justifying causes. Parliament is not so much as mentioned, in the whole instrument. When odious and oppressive acts are referred to, it is done by charging the king with confederating, with others, "in pretended acts of legislation;" the object being, constantly, to hold the king himself directly responsible for those measures which were the grounds of separation. Even the precedent of the English revolution was not overlooked, and in this case, as well as in that, occasion was found to say that the king had *abdicated* the government. Consistency with the principles upon which resistance began, and with all the previous state papers issued by Congress, required that the declaration should be bottomed on the misgovernment of the king; and therefore it was properly framed with that aim and to that end. The king was known, indeed, to have acted, as in other cases, by his ministers, and with his parliament; but as our ancestors had never admitted themselves subject either to ministers or to parliament, there were no reasons to be given for now refusing obedience to their authority. This clear and obvious necessity of founding the declaration on the misconduct of the king himself, gives to that instrument its personal application, and its character of direct and pointed accusation.

The declaration having been reported to Congress, by the committee, the resolution itself was taken up and debated on the first day of July, and again on the second, on which last day it was agreed to and adopted, in these words,

Resolved, THAT THESE UNITED COLONIES ARE, AND OF RIGHT OUGHT TO BE, FREE AND INDEPENDENT STATES; THAT THEY ARE ABSOLVED FROM ALL ALLEGIANCE TO THE BRITISH CROWN, AND THAT ALL POLITICAL CONNEXION BETWEEN THEM, AND THE STATE OF GREAT BRITAIN IS, AND OUGHT TO BE, TOTALLY DISSOLVED.

Having thus passed the main resolution, Congress proceeded to consider the reported draught of the declaration. It was discussed on the second, and third, and FOURTH days of the month, in committee of the whole; and on the last of those days, being reported from that committee, it received the final approbation and sanction of Congress. It was ordered, at the same time, that copies be sent to the several States, and that it be proclaimed at the head of the army. The declaration thus published, did not bear the names of the members, for as yet it had not been signed by them. It was authenticated, like other papers of the Congress, by the signatures of the president and secretary. On the 19th of July, as appears by the secret journal, Congress "*Resolved*, that the declaration, passed on the fourth, be fairly engrossed on parchment, with the title and style of 'THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA;' and that the same, when engrossed, be signed by every member of Congress." And on the SECOND DAY OF AUGUST, following, "the declaration, being engrossed and compared

at the table, was signed by the members." So that it happens, fel low citizens, that we pay these honors to their memory, on the an niversary of that day, on which these great men actually signed their names to the declaration. The declaration was thus made, that is, it passed, and was adopted, as an act of Congress, on the fourth of July; it was then signed and certified by the president and secretary, like other acts. The FOURTH OF JULY, therefore, is the ANNIVERSARY OF THE DECLARATION. But the signatures of the members present were made to it, being then engrossed on parchment, on the second day of August. Absent members afterwards signed, as they came in; and indeed it bears the names of some who were not chosen members of Congress, until after the fourth of July. The interest belonging to the subject, will be sufficient, I hope, to justify these details.

The Congress of the Revolution, fellow citizens, sat with closed doors, and no report of its debates was ever taken. The discussion, therefore, which accompanied this great measure, has never been preserved, except in memory, and by tradition. But it is, I believe, doing no injustice to others, to say, that the general opinion was, and uniformly has been, that in debate, on the side of independence, JOHN ADAMS had no equal. The great author of the declaration himself has expressed that opinion uniformly and strongly. "JOHN ADAMS," said he, in the hearing of him who has now the honor to address you, "JOHN ADAMS was our colossus on the floor. Not graceful, not elegant, not always fluent, in his public addresses, he yet came out with a power, both of thought and of expression, which moved us from our seats."

For the part which he was here to perform, Mr. Adams doubtless was eminently fitted. He possessed a bold spirit, which disregarded danger, and a sanguine reliance on the goodness of the cause, and the virtues of the people, which led him to overlook all obstacles. His character, too, had been formed in troubled times. He had been rocked in the early storms of the controversy, and had acquired a decision and a hardihood, proportioned to the severity of the discipline which he had undergone.

He not only loved the American cause devoutly, but had studied and understood it. It was all familiar to him. He had tried his powers, on the questions which it involved, often, and in various ways; and had brought to their consideration whatever of argument or illustration the history of his own country, the history of England, or the stores of ancient or of legal learning could furnish. Every grievance, enumerated in the long catalogue of the declaration, had been the subject of his discussion, and the object of his remonstrance and reprobation. From 1760, the colonies, the rights of the colonies, the liberties of the colonies, and the wrongs inflicted on the colonies, had engaged his constant attention; and it has surprised those, who have had the opportunity of observing, with what full remembrance, and with what prompt recollection, he could refer, in his extreme old age, to every act of Parliament affecting the colonies, distinguishing and stating their respective titles, sections, and provisions; and to all the colonial memorials, remonstrances, and petitions, with whatever else belonged to the intimate and exact history of the

times from that year to 1775. It was in his own judgment, between these years, that the American people came to a full understanding and thorough knowledge of their rights, and to a fixed resolution of maintaining them; and bearing himself an active part in all important transactions, the controversy with England being then, in effect, the business of his life, facts, dates and particulars made an impression which was never effaced. He was prepared, therefore, by education and discipline, as well as by natural talent and natural temperament, for the part which he was now to act.

The eloquence of Mr. Adams resembled his general character, and formed, indeed, a part of it. It was bold, manly, and energetic; and such the crisis required. When public bodies are to be addressed on momentous occasions, when great interests are at stake, and strong passions excited, nothing is valuable, in speech, farther than it is connected with high intellectual and moral endowments. Clearness, force, and earnestness are the qualities which produce conviction. True eloquence, indeed, does not consist in speech. It cannot be brought from far. Labor and learning may toil for it, but they will toil in vain. Words and phrases may be marshalled in every way, but they cannot compass it. It must exist in the man, in the subject, and in the occasion. Affected passion, intense expression, the pomp of declamation, all may aspire after it—they cannot reach it. It comes, if it come at all, like the outbreaking of a fountain from the earth, or the bursting forth of volcanic fires, with spontaneous, original, native force. The graces taught in the schools, the costly ornaments, and studied contrivances of speech, shock and disgust men, when their own lives, and the fate of their wives, their children, and their country, hang on the decision of the hour. Then words have lost their power, rhetoric is vain, and all elaborate oratory contemptible. Even genius itself then feels rebuked, and subdued, as in the presence of higher qualities. Then, patriotism is eloquent; then, self-devotion is eloquent. The clear conception, outrunning the deductions of logic, the high purpose, the firm resolve, the dauntless spirit, speaking on the tongue, beaming from the eye, informing every feature, and urging the whole man onward, right onward to his object—this, this is eloquence; or rather it is something greater and higher than all eloquence, it is action, noble, sublime, godlike action.

In July 1776, the controversy had passed the stage of argument. An appeal had been made to force, and opposing armies were in the field. Congress, then, was to decide whether the tie which had so long bound us to the parent state, was to be severed at once, and severed forever. All the colonies had signified their resolution to abide by this decision, and the people looked for it with the most intense anxiety. And surely, fellow citizens, never, never were men called to a more important political deliberation. If we contemplate it from the point where they then stood, no question could be more full of interest; if we look at it now, and judge of its importance by its effects, it appears in still greater magnitude.

Let us, then, bring before us the assembly, which was about to decide a question thus big with the fate of empire. Let us open their doors, and look in upon their deliberations. Let us survey the

anxious and care-worn countenances, let us hear the firm-toned voices, of this band of patriots.

Hancock presides over the solemn sitting; and one of those not yet prepared to pronounce for absolute independence, is on the floor, and is urging his reasons for dissenting from the declaration.

"Let us pause! This step, once taken, cannot be retraced. This resolution, once passed, will cut off all hope of reconciliation. If success attend the arms of England, we shall then be no longer colonies, with charters, and with privileges; these will all be forfeited by this act; and we shall be in the condition of other conquered people, at the mercy of the conquerors. For ourselves, we may be ready to run the hazard; but are we ready to carry the country to that length? Is success so probable as to justify it? Where is the military, where the naval power, by which we are to resist the whole strength of the arm of England, for she will exert that strength to the utmost? Can we rely on the constancy and perseverance of the people? or will they not act, as the people of other countries have acted, and, wearied with a long war, submit, in the end, to a worse oppression? While we stand on our old ground, and insist on redress of grievances, we know we are right, and are not answerable for consequences. Nothing, then, can be imputable to us. But if we now change our object, carry our pretensions further, and set up for absolute independence, we shall lose the sympathy of mankind. We shall no longer be defending what we possess, but struggling for something which we never did possess, and which we have solemnly and uniformly disclaimed all intention of pursuing, from the very outset of the troubles. Abandoning thus our old ground, of resistance only to arbitrary acts of oppression, the nations will believe the whole to have been mere pretence, and they will look on us, not as injured, but as ambitious, subjects. I shudder, before this responsibility. It will be on us, if relinquishing the ground we have stood on so long, and stood on so safely, we now proclaim independence, and carry on the war for that object, while these cities burn, these pleasant fields whiten and bleach with the bones of their owners, and these streams run blood. It will be upon us, it will be upon us, if failing to maintain this unseasonable and ill-judged declaration, a sterner despotism, maintained by military power, shall be established over our posterity, when we ourselves, given up by an exhausted, a harassed, a misled people, shall have expiated our rashness and atoned for our presumption, on the scaffold."

It was for Mr. Adams to reply to arguments like these. We know his opinions, and we know his character. He would commence with his accustomed directness and earnestness.

"Sink or swim, live or die, survive or perish, I give my hand, and my heart, to this vote. It is true, indeed, that in the beginning, we aimed not at independence. But there's a Divinity which shapes our ends. The injustice of England has driven us to arms; and, blinded to her own interest for our good, she has obstinately persisted, till independence is now within our grasp. We have but to reach forth to it, and it is ours. Why then should we defer the declaration? Is any man so weak as now to hope for a reconciliation with England, which shall leave either safety to the country

and its liberties, or safety to his own life, and his own honor? Are not you, sir, who sit in that chair, is not he, our venerable colleague near you, are you not both already the proscribed and predestined objects of punishment and of vengeance? Cut off from all hope of royal clemency, what are you, what can you be, while the power of England remains, but outlaws? If we postpone independence, do we mean to carry on, or to give up, the war? Do we mean to submit to the measures of parliament, Boston port-bill and all? Do we mean to submit, and consent that we ourselves shall be ground to powder, and our country and its rights trodden down in the dust? I know we do not mean to submit. We never shall submit. Do we intend to violate that most solemn obligation ever entered into by men, that plighting, before God, of our sacred honor to Washington, when putting him forth to incur the dangers of war, as well as the political hazards of the times, we promised to adhere to him, in every extremity, with our fortunes and our lives? I know there is not a man here, who would not rather see a general conflagration sweep over the land, or an earthquake sink it, than one jot or tittle of that plighted faith fall to the ground. For myself, having, twelve months ago, in this place, moved you, that George Washington be appointed commander of the forces, raised or to be raised, for defence of American liberty, may my right hand forget her cunning, and my tongue cleave to the roof of my mouth, if I hesitate or waver, in the support I give him. The war, then, must go on. We must fight it through. And if the war must go on, why put off longer the Declaration of Independence? That measure will strengthen us. It will give us character abroad. The nations will then treat with us, which they never can do while we acknowledge ourselves subjects, in arms against our sovereign. Nay I maintain that England, herself, will sooner treat for peace with us on the footing of Independence, than consent, by repealing her acts, to acknowledge that her whole conduct towards us has been a course of injustice and oppression. Her pride will be less wounded, by submitting to that course of things which now predestinates our independence, than by yielding the points in controversy to her rebellious subjects. The former she would regard as the result of fortune; the latter she would feel as her own deep disgrace. Why then, why then, sir, do we not as soon as possible, change this from a civil to a national war? And since we must fight it through, why not put ourselves in a state to enjoy all the benefits of victory, if we gain the victory?

"If we fail, it can be no worse for us. But we shall not fail. The cause will raise up armies; the cause will create navies. The people, the people, if we are true to them, will carry us, and will carry themselves, gloriously, through this struggle. I care not how fickle other people have been found. I know the people of these colonies, and I know that resistance to British aggression is deep and settled in their hearts and cannot be eradicated. Every colony, indeed, has expressed its willingness to follow, if we but take the lead. Sir, the declaration will inspire the people with increased courage. Instead of a long and bloody war for restoration of privileges, for redress of grievances, for chartered immunities, held under a British king, set before them the glorious object of entire independence, and it will

breathe into them anew the breath of life. Read this declaration at the head of the army; every sword will be drawn from its scabbard, and the solemn vow uttered, to maintain it, or to perish on the bed of honor. Publish it from the pulpit; religion will approve it, and the love of religious liberty will cling round it, resolved to stand with it, or fall with it. Send it to the public halls; proclaim it there; let them hear it, who heard the first roar of the enemy's cannon; let them see it, who saw their brothers and their sons fall on the field of Bunkerhill, and in the streets of Lexington and Concord, and the very walls will cry out in its support.

"Sir, I know the uncertainty of human affairs, but I see, I see clearly, through this day's business. You and I, indeed, may rue it. We may not live to the time, when this declaration shall be made good. We may die; die, colonists; die, slaves; die, it may be, ignominiously and on the scaffold. Be it so. Be it so. If it be the pleasure of Heaven that my country shall require the poor offering of my life, the victim shall be ready, at the appointed hour of sacrifice, come when that hour may. But while I do live, let me have a country, or at least the hope of a country, and that a free country.

"But whatever may be our fate, be assured, be assured, that this declaration will stand. It may cost treasure, and it may cost blood; but it will stand, and it will richly compensate for both. Through the thick gloom of the present, I see the brightness of the future, as the sun in heaven. We shall make this a glorious, an immortal day. When we are in our graves, our children will honor it. They will celebrate it, with thanksgiving, with festivity, with bonfires, and illuminations. On its annual return they will shed tears, copious, gushing tears, not of subjection and slavery, not of agony and distress, but of exultation, of gratitude, and of joy. Sir, before God, I believe the hour is come. My judgment approves this measure, and my whole heart is in it. All that I have, and all that I am, and all that I hope, in this life, I am now ready here to stake upon it; and I leave off, as I begun, that live or die, survive or perish, I am for the declaration. It is my living sentiment, and by the blessing of God it shall be my dying sentiment; independence, *now;* and INDEPENDENCE FOREVER."

And so that day shall be honored, illustrious prophet and patriot! so that day shall be honored, and as often as it returns, thy renown shall come along with it, and the glory of thy life, like the day of thy death, shall not fail from the remembrance of men.

It would be unjust, fellow citizens, on this occasion, while we express our veneration for him who is the immediate subject of these remarks, were we to omit a most respectful, affectionate, and grateful mention of those other great men, his colleagues, who stood with him, and with the same spirit, the same devotion, took part in the interesting transaction. HANCOCK, the proscribed HANCOCK, exiled from his home by a military governor, cut off, by proclamation, from the mercy of the crown, Heaven reserved, for him, the distinguished honor of putting this great question to the vote, and of writing his own name first, and most conspicuously, on that parchment which spoke defiance to the power of the crown of England. There, too, is the name of that other proscribed patriot,

Samuel Adams; a man who hungered and thirsted for the independence of his country; who thought the declaration halted and lingered, being himself not only ready, but eager, for it, long before it was proposed; a man of the deepest sagacity, the clearest foresight, and the profoundest judgment in men. And there is Gerry, himself among the earliest and the foremost of the patriots, found, when the battle of Lexington summoned them to common councils, by the side of Warren; a man who lived to serve his country at home and abroad, and to die in the second place in the government There, too, is the inflexible, the upright, the Spartan character, Robert Treat Paine. He, also, lived to serve his country through the struggle, and then withdrew from her councils, only that he might give his labors and his life to his native State, in another relation. These names, fellow citizens, are the treasures of the commonwealth; and they are treasures which grow brighter by time.

It is now necessary to resume, and to finish with great brevity, the notice of the lives of those, whose virtues and services we have met to commemorate.

Mr. Adams remained in Congress from its first meeting, till November 1777, when he was appointed minister to France. He proceeded on that service, in the February following, embarking in the Boston frigate, on the shore of his native town, at the foot of Mount Wollaston. The year following, he was appointed commissioner to treat of peace with England. Returning to the United States, he was a delegate from Braintree in the convention for framing the constitution of this commonwealth, in 1780. At the latter end of the same year, he again went abroad, in the diplomatic service of the country, and was employed at various courts, and occupied with various negotiations, until 1788. The particulars of these interesting and important services this occasion does not allow time to relate. In 1782 he concluded our first treaty with Holland. His negotiations with that republic, his efforts to persuade the States-General to recognise our independence, his incessant and indefatigable exertions to represent the American cause favorably, on the Continent, and to counteract the designs of its enemies, open and secret; and his successful undertaking to obtain loans, on the credit of a nation yet new and unknown, are among his most arduous, most useful, most honorable services. It was his fortune to bear a part in the negotiation for peace with England, and in something more than six years from the declaration which he had so strenuous ly supported, he had the satisfaction to see the minister plenipotentiary of the crown subscribe to the instrument which declared, that his "Britanic Majesty acknowledged the United States to be free, sovereign, and independent." In these important transactions, Mr. Adams's conduct received the marked approbation of Congress, and of the country.

While abroad, in 1787, he published his Defence of the American Constitutions; a work of merit, and ability, though composed with haste, on the spur of a particular occasion, in the midst of other occupations, and under circumstances not admitting of careful revision. The immediate object of the work was to counteract the weight of opinions advanced by several popular European writers

of that day, Mr. Turgot, the Abbé de Mably, and Dr. Price, at a time when the people of the United States were employed in forming and revising their systems of government.

Returning to the United States in 1788, he found the new government about going into operation, and was himself elected the first Vice-President, a situation which he filled with reputation for eight years, at the expiration of which he was raised to the Presidential chair, as immediate successor to the immortal Washington. In this high station he was succeeded by Mr. Jefferson, after a memorable controversy, between their respective friends, in 1801; and from that period his manner of life has been known to all who hear me. He has lived, for five and twenty years, with every enjoyment that could render old age happy. Not inattentive to the occurrences of the times, political cares have yet not materially, or for any long time, disturbed his repose. In 1820 he acted as elector of President and Vice-President, and in the same year we saw him, then at the age of eighty-five, a member of the convention of this Commonwealth, called to revise the constitution. Forty years before, he had been one of those who formed that Constitution; and he had now the pleasure of witnessing that there was little which the people desired to change. Possessing all his faculties to the end of his long life, with an unabated love of reading and contemplation, in the centre of interesting circles of friendship and affection, he was blessed, in his retirement, with whatever of repose and felicity, the condition of man allows. He had, also, other enjoyments. He saw around him that prosperity and general happiness, which had been the object of his public cares and labors. No man ever beheld more clearly, and for a longer time, the great and beneficial effects of the services rendered by himself to his country. That liberty, which he so early defended, that independence of which he was so able an advocate and supporter, he saw, we trust, firmly and securely established. The population of the country thickened around him faster, and extended wider, than his own sanguine predictions had anticipated; and the wealth, respectability, and power of the nation sprang up to a magnitude, which it is quite impossible he could have expected to witness, in his day. He lived, also, to behold those principles of civil freedom, which had been developed, established, and pratically applied in America, attract attention, command respect, and awaken imitation, in other regions of the globe: and well might, and well did he, exclaim, "Where will the consequences of the American Revolution end!"

If anything yet remain to fill this cup of happiness, let it be added, that he lived to see a great and intelligent people bestow the highest honor in their gift, where he had bestowed his own kindest parental affections, and lodged his fondest hopes. Thus honored in life, thus happy at death, he saw the JUBILEE, and he died; and with the last prayers which trembled on his lips, was the fervent supplication for his country, "independence forever."

Mr. Jefferson, having been occupied in the years 1778 and 1779, in the important service of revising the laws of Virginia, was elected governor of that State, as successor to Patrick Henry, and held the situation when the State was invaded by the British arms.

In 1781 he published his Notes on Virginia, a work which attracted attention in Europe as well as America, dispelled many misconceptions respecting this Continent, and gave its author a place among men distinguished for science. In November 1783, he again took his seat in the Continental Congress, but in the May following was appointed Minister Plenipotentiary, to act abroad, in the negotiation of commercial treaties, with Dr. Franklin and Mr. Adams. He proceeded to France, in execution of this mission, embarking at Boston; and that was the only occasion on which he ever visited this place. In 1785 he was appointed minister to France, the duties of which situation he continued to perform, until October 1789, when he obtained leave to retire, just on the eve of that tremendous Revolution which has so much agitated the world, in our times. Mr. Jefferson's discharge of his diplomatic duties was marked by great ability, diligence, and patriotism; and while he resided at Paris, in one of the most interesting periods, his character for intelligence, his love of knowledge, and of the society of learned men, distinguished him in the highest circles of the French capital. No court in Europe had, at that time, in Paris, a representative commanding or enjoying higher regard, for political knowledge or for general attainment, than the minister of this then infant republic. Immediately on his return to his native country, at the organization of the government under the present Constitution, his talents and experience recommended him to President Washington, for the first office in his gift. He was placed at the head of the Department of State. In this situation, also, he manifested conspicuous ability. His correspondence with the ministers of other powers residing here, and his instructions to our own diplomatic agents abroad, are among our ablest State Papers. A thorough knowledge of the laws and usages of nations, perfect acquaintance with the immediate subject before him, great felicity, and still greater facility, in writing, show themselves in whatever effort his official situation called on him to make. It is believed, by competent judges, that the diplomatic intercourse of the government of the United States, from the first meeting of the Continental Congress in 1774 to the present time, taken together, would not suffer, in respect to the talent with which it has been conducted, by comparison with anything which other and older states can produce; and to the attainment of this respectability and distinction, Mr. Jefferson has contributed his full part.

On the retirement of General Washington from the presidency, and the election of Mr. Adams to that office, in 1797, he was chosen Vice-President. While presiding, in this capacity, over the deliberations of the senate, he compiled and published a Manual of Parliamentary Practice, a work of more labor and more merit, than is indicated by its size. It is now received, as the general standard, by which proceedings are regulated, not only in both Houses of Congress, but in most of the other legislative bodies in the country. In 1801, he was elected President, in opposition to Mr. Adams, and re-elected in 1805, by a vote approaching towards unanimity.

From the time of his final retirement from public life, in 1808, Mr. Jefferson lived, as became a wise man. Surrounded by affectionate

friends, his ardor in the pursuit of knowledge undiminished, with uncommon health, and unbroken spirits, he was able to enjoy largely the rational pleasures of life, and to partake in that public prosperity, which he had so much contributed to produce. His kindness and hospitality, the charm of his conversation, the ease of his manners, the extent of his acquirements, and especially the full store of revolutionary incidents, which he possessed, and which he knew when and how to dispense, rendered his abode in a high degree attractive to his admiring countrymen, while his high public and scientific character drew towards him every intelligent and educated traveller from abroad. Both Mr. Adams and Mr. Jefferson had the pleasure of knowing that the respect, which they so largely received, was not paid to their official stations. They were not men made great by office; but great men, on whom the country for its own benefit had conferred office. There was that in them, which office did not give, and which the relinquishment of office did not, and could not, take away. In their retirement, in the midst of their fellow citizens, themselves private citizens, they enjoyed as high regard and esteem, as when filling the most important places of public trust.

There remained to Mr. Jefferson yet one other work of patriotism and beneficence, the establishment of a university in his native state. To this object he devoted years of incessant and anxious attention, and by the enlightened liberality of the legislature of Virginia, and the co-operation of other able and zealous friends, he lived to see it accomplished. May all success attend this infant seminary; and may those who enjoy its advantages, as often as their eyes shall rest on the neighbouring height, recollect what they owe to their disinterested and indefatigable benefactor; and may letters honor him who thus labored in the cause of letters.

Thus useful, and thus respected, passed the old age of Thomas Jefferson. But time was on its ever-ceaseless wing, and was now bringing the last hour of this illustrious man. He saw its approach, with undisturbed serenity. He counted the moments, as they passed, and beheld that his last sands were falling. That day, too, was at hand, which he had helped to make immortal. One wish, one hope—if it were not presumptuous—beat in his fainting breast. Could it be so—might it please God—he would desire—once more—to see the sun—once more to look abroad on the scene around him, on the great day of liberty. Heaven, in its mercy, fulfilled that prayer. He saw that sun—he enjoyed its sacred light—he thanked God, for this mercy, and bowed his aged head to the grave. "*Felix, non vitæ tantum claritate, sed etiam opportunitate mortis.*"

The last public labor of Mr. Jefferson naturally suggests the expression of the high praise which is due, both to him and to Mr. Adams, for their uniform and zealous attachment to learning, and to the cause of general knowledge. Of the advantages of learning, indeed, and of literary accomplishments, their own characters were striking recommendations, and illustrations. They were scholars, ripe and good scholars; widely acquainted with ancient, as well as modern literature, and not altogether uninstructed in the deeper sciences. Their acquirements, doubtless, were different, and so were the par-

ticular objects of their literary pursuits; as their tastes and characters, in these respects, differed like those of other men. Being, also, men of busy lives, with great objects, requiring action, constantly before them, their attainments in letters did not become showy, or obtrusive. Yet, I would hazard the opinion, that if we could now ascertain all the causes which gave them eminence and distinction, in the midst of the great men with whom they acted, we should find, not among the least, their early acquisition in literature, the resources which it furnished, the promptitude and facility which it communicated, and the wide field it opened, for analogy and illustration; giving them, thus, on every subject, a larger view, and a broader range, as well for discussion, as for the government of their own conduct.

Literature sometimes, and pretensions to it much oftener, disgusts, by appearing to hang loosely on the character, like something foreign or extraneous, not a part, but an ill-adjusted appendage; or by seeming to overload and weigh it down, by its unsightly bulk, like the productions of bad taste in architecture, where there is massy and cumbrous ornament, without strength or solidity of column. This has exposed learning, and especially classical learning, to reproach. Men have seen that it might exist, without mental superiority, without vigor, without good taste, and without utility. But, in such cases, classical learning has only not inspired natural talent; or, at most, it has but made original feebleness of intellect, and natural bluntness of perception, something more conspicuous. The question, after all, if it be a question, is, whether literature, ancient as well as modern, does not assist a good understanding, improve natural good taste, add polished armor to native strength, and render its possessor, not only more capable of deriving private happiness from contemplation and reflection, but more accomplished, also, for action, in the affairs of life, and especially for public action. Those whose memories we now honor, were learned men; but their learning was kept in its proper place, and made subservient to the uses and objects of life. They were scholars not common, nor superficial; but their scholarship was so in keeping with their character, so blended and inwrought, that careless observers, or bad judges, not seeing an ostentatious display of it, might infer that it did not exist; forgetting, or not knowing, that classical learning, in men who act in conspicuous public stations, perform duties which exercise the faculty of writing, or address popular, deliberative, or judicial bodies, is often felt, where it is little seen, and sometimes felt more effectually, because it is not seen at all.

But the cause of knowledge, in a more enlarged sense, the cause of general knowledge and of popular education, had no warmer friends, nor more powerful advocates, than Mr. Adams and Mr. Jefferson. On this foundation, they knew, the whole republican system rested; and this great and all-important truth they strove to impress, by all the means in their power. In the early publication, already referred to, Mr. Adams expresses the strong and just sentiment, that the education of the poor is more important, even to the rich themselves, than all their own riches. On this great truth, in-

deed, is founded that unrivalled, that invaluable political and moral institution, our own blessing, and the glory of our fathers, the New England system of free schools

As the promotion of knowledge had been the object of their regard through life, so these great men made it the subject of their testamentary bounty. Mr. Jefferson is understood to have bequeathed his library to the university, and that of Mr. Adams is bestowed on the inhabitants of Quincy.

Mr. Adams, and Mr. Jefferson, fellow citizens, were successively Presidents of the United States. The comparative merits of their respective administrations for a long time agitated and divided public opinion. They were rivals, each supported by numerous and powerful portions of the people, for the highest office. This contest, partly the cause, and partly the consequence, of the long existence of two great political parties in the country, is now part of the history of our government. We may naturally regret, that anything should have occurred to create difference and discord, between those who had acted harmoniously and efficiently in the great concerns of the revolution. But this is not the time, nor this the occasion, for entering into the grounds of that difference, or for attempting to discuss the merits of the questions which it involves. As practical questions, they were canvassed, when the measures which they regarded were acted on and adopted; and as belonging to history, the time has not come for their consideration.

It is, perhaps, not wonderful, that when the Constitution of the United States went first into operation, different opinions should be entertained, as to the extent of the powers conferred by it. Here was a natural source of diversity of sentiment. It is still less wonderful, that that event, about contemporary with our government, under the present Constitution, which so entirely shocked all Europe, and disturbed our relations with her leading powers, should be thought, by different men, to have different bearings on our own prosperity; and that the early measures, adopted by our government, in consequence of this new state of things, should be seen in opposite lights. It is for the future historian, when what now remains of prejudice and misconception shall have passed away, to state these different opinions, and pronounce impartial judgment. In the meantime, all good men rejoice, and well may rejoice, that the sharpest differences sprung out of measures, which, whether right or wrong, have ceased, with the exigencies that gave them birth, and have left no permanent effect, either on the Constitution, or on the general prosperity of the country. This remark, I am aware, may be supposed to have its exception, in one measure, the alteration of the Constitution, as to the mode of choosing President; but it is true, in its general application. Thus the course of policy pursued towards France, in 1798, on the one hand, and the measures of commercial restriction, commenced in 1807, on the other, both subjects of warm and severe opposition, have passed away, and left nothing behind them They were temporary, and whether wise or unwise, their consequences were limited to their respective occasions. It is equally clear, at the same time, and it is equally gratifying, that those measures of

both administrations, which were of durable importance, and which drew after them interesting and long remaining consequences, have received general approbation. Such was the organization, or rather the creation, of the navy, in the administration of Mr. Adams; such the acquisition of Louisiana, in that of Mr. Jefferson. The country, it may safely be added, is not likely to be willing either to approve, or to reprobate, indiscriminately, and in the aggregate, all the measures of either, or of any, administration. The dictate of reason and of justice is, that, holding each one his own sentiments on the points in difference, we imitate the great men themselves, in the forbearance and moderation which they have cherished, and in the mutual respect and kindness which they have been so much inclined to feel and to reciprocate.

No men, fellow citizens, ever served their country with more entire exemption from every imputation of selfish and mercenary motives than those to whose memory we are paying these proofs of respect. A suspicion of any disposition to enrich themselves, or to profit by their public employments, never rested on either. No sordid motive approached them. The inheritance which they have left to their children, is of their character and their fame.

Fellow-citizens, I will detain you no longer by this faint and feeble tribute to the memory of the illustrious dead. Even in other hands, adequate justice could not be performed, within the limits of this occasion. Their highest, their best praise, is your deep conviction of their merits, your affectionate gratitude for their labors and services. It is not my voice, it is this cessation of ordinary pursuits, this arresting of all attention, these solemn ceremonies, and this crowded house, which speak their eulogy. Their fame, indeed, is safe. That is now treasured up, beyond the reach of accident. Although no sculptured marble should rise to their memory, nor engraved stone bear record of their deeds, yet will their remembrance be as lasting as the land they honored. Marble columns may, indeed, moulder into dust, time may erase all impress from the crumbling stone, but their fame remains; for with AMERICAN LIBERTY it rose, and with AMERICAN LIBERTY ONLY can it perish. It was the last swelling peal of yonder choir, "THEIR BODIES ARE BURIED IN PEACE, BUT THEIR NAME LIVETH EVERMORE." I catch that solemn song, I echo that lofty strain of funeral triumph, "THEIR NAME LIVETH EVERMORE."

Of the illustrious signers of the Declaration of Independence there now remains only CHARLES CARROLL. He seems an aged oak, standing alone on the plain, which time has spared a little longer, after all its contemporaries have been levelled with the dust. Venerable object! we delight to gather round its trunk, while yet it stands, and to dwell beneath its shadow. Sole survivor of an assembly of as great men as the world has witnessed, in a transaction, one of the most important that history records, what thoughts, what interesting reflections must fill his elevated and devout soul! If he dwell on the past, how touching its recollections; if he survey the present, how happy, how joyous, how full of the fruition of that hope, which his ardent patriotism indulged; if he glance at the fu-

ture, how does the prospect of his country's advancement almost bewilder his weakened conception! Fortunate, distinguished patriot! Interesting relic of the past! Let him know that while we honor the dead, we do not forget the living; and that there is not a heart here which does not fervently pray, that Heaven may keep him yet back from the society of his companions.

And now, fellow citizens, let us not retire from this occasion, without a deep and solemn conviction of the duties which have devolved upon us. This lovely land, this glorious liberty, these benign institutions, the dear purchase of our fathers, are ours; ours to enjoy, ours to preserve, ours to transmit. Generations past, and generations to come, hold us responsible for this sacred trust. Our fathers, from behind, admonish us, with their anxious paternal voices, posterity calls out to us, from the bosom of the future, the world turns hither its solicitous eyes—all, all conjure us to act wisely, and faithfully, in the relation which we sustain. We can never, indeed, pay the debt which is upon us; but by virtue, by morality, by religion, by the cultivation of every good principle and every good habit, we may hope to enjoy the blessing, through our day, and to leave it unimpaired to our children. Let us feel deeply how much, of what we are and of what we possess, we owe to this liberty, and these institutions of government. Nature has, indeed, given us a soil, which yields bounteously to the hands of industry, the mighty and fruitful ocean is before us, and the skies over our heads shed health and vigor. But what are lands, and seas, and skies, to civilized man, without society, without knowledge, without morals, without religious culture; and how can these be enjoyed, in all their extent, and all their excellence, but under the protection of wise institutions and a free government? Fellow citizens, there is not one of us, there is not one of us here present, who does not, at this moment, and at every moment, experience, in his own condition, and in the condition of those most near and dear to him, the influence and the benefits of this liberty, and these institutions. Let us then acknowledge the blessing, let us feel it deeply and powerfully, let us cherish a strong affection for it, and resolve to maintain and perpetuate it. The blood of our fathers, let it not have been shed in vain; the great hope of posterity, let it not be blasted.

The striking attitude, too, in which we stand to the world around us, a topic to which, I fear, I advert too often, and dwell on too long, cannot be altogether omitted here. Neither individuals nor nations can perform their part well, until they understand and feel its importance, and comprehend and justly appreciate all the duties belonging to it. It is not to inflate national vanity, nor to swell a light and empty feeling of self-importance, but it is that we may judge justly of our situation, and of our own duties, that I earnestly urge this consideration of our position, and our character, among the nations of the earth. It cannot be denied, but by those who would dispute against the sun, that with America, and in America, a new era commences in human affairs. This era is distinguished by Free Representative Governments, by entire religious liberty, by improved systems of national intercourse, by a newly awakened,

and an unconquerable spirit of free inquiry, and by a diffusion of knowledge through the community, such as has been before altogether unknown and unheard of. America, America, our country, fellow citizens, our own dear and native land, is inseparably connected, fast bound up, in fortune and by fate, with these great interests. If they fall, we fall with them; if they stand, it will be because we have upholden them. Let us contemplate, then, this connexion, which binds the prosperity of others to our own; and let us manfully discharge all the duties which it imposes. If we cherish the virtues and the principles of our fathers, Heaven will assist us to carry on the work of human liberty and human happiness. Auspicious omens cheer us. Great examples are before us. Our own firmament now shines brightly upon our path. WASHINGTON is in the clear upper sky. These other stars have now joined the American constellation; they circle round their centre, and the heavens beam with new light. Beneath this illumination, let us walk the course of life, and at its close devoutly commend our beloved country, the common parent of us all, to the Divine Benignity.

SPEECH

DELIVERED AT A MEETING OF CITIZENS OF BOSTON, HELD IN FANEUIL HALL, ON THE EVENING OF APRIL 3d, 1825, PREPARATORY TO THE GENERAL ELECTION IN MASSACHUSETTS.

Mr. Webster said, he was quite unaccustomed to appear in that place; having, on no occasion, addressed his fellow citizens there, either to recommend or to oppose the support of any candidates for public office. He had long been of opinion, that to preserve the distinction, and the hostility, of political parties, was not consistent with the highest degree of public good. At the same time he did not find fault with the conduct, nor question the motives, of those who thought otherwise. But, entertaining this opinion, he had abstained from attending on those occasions, in which the merits of public men, and of candidates for office, were discussed, necessarily, with more or less reference to party attachment, and party organization.

The present was a different occasion. The sentiment which had called this meeting together, was a sentiment of union and conciliation; a sentiment so congenial to his own feelings, and to his opinion of the public interest, that he could not resist the inclination to be present, and to express his entire and hearty approbation.

He should forbear, Mr. W. said, from all remarks upon the particular names which had been recommended by the committee. They had been selected, he must presume, fairly, and with due consideration, by those who were appointed for that purpose. In cases of this sort every one cannot expect to find everything precisely as he might wish it; but those who concurred in the general sentiment would naturally allow that sentiment to prevail, as far as possible, over particular objections.

On the general question he would make a few remarks, begging the indulgence of the meeting, if he should say anything which might with more propriety, proceed from others.

He hardly conceived how well disposed and intelligent minds could differ, as to the question, whether party contest, and party strife, organized, systematic, and continued, were of themselves desirable ingredients in the composition of society.—Difference of opinion, on political subjects, honorable competition, and emulous

rivalry, may, indeed, be useful. But these are very different things from organized and systematic party combinations. He admitted, even, that party associations were sometimes unavoidable, and perhaps necessary, to the accomplishment of other ends and purposes. —But this did not prove that, of themselves, they were good; or that they should be continued and preserved for their own sake, when there had ceased to be any object to be effected by them.

But there were those who supposed, that whether political party distinctions were, or were not, useful, it was impossible to abolish them. Now he thought, on the contrary, that under present circumstances, it was quite impossible to continue them. New parties, indeed, might arise, growing out of new events, or new questions; but as to those old parties, which had sprung from controversies now no longer pending, or from feelings which time and other causes had now changed, or greatly allayed, he did not believe that they could long remain. Efforts, indeed, made to that end, with zeal and perseverance, might delay their extinction, but, he thought, could not prevent it. There was nothing to keep alive these distinctions, in the interests and objects which now engage society. New questions and new objects arise, having no connexion with the subjects of past controversies, and present interest overcomes or absorbs the recollection of former controversies. All that are united on these existing questions, and present interests, are not likely to weaken their efforts to promote them by angry reflections on past differences. If there were nothing, *in things*, to divide about, he thought the people not likely to maintain systematic controversies about *men*. They have no interest in so doing. Associations formed to support *principles*, may be called *parties;* but if they have no bond of union but adherence to particular *men* they become *factions*.

The people, in his opinion, were at present grateful to all parties, for whatever of good they had accomplished, and indulgent to all for whatever of error they had committed; and, with these feelings, were now mainly intent on the great objects which affected their present interests. There might be exceptions to this remark; he was afraid there were; but nevertheless, such appeared to him to be the general feeling in the country. It was natural that some prejudices should remain longer than their causes, as the waves lash the shore, for a time, after the storm has subsided; but the tendency of the elements was to repose.—Monopolies of all sorts were getting out of fashion, they were yielding to liberal ideas, and to the obvious justice and expediency of fair competition.

An administration of the general government, which had been, in general, highly satisfactory to the country, had now closed. He was not aware that it could with propriety be said that that administration had been either supported, or opposed by any party associations, or on any party principles. Certain it was, that as far as there had been any organized opposition to the administration, it had had nothing to do with former parties. A new administration had now commenced, and he need hardly say that the most liberal and conciliatory principles had been avowed. It could not be doubted, that it would conform to those principles. Thus far, he believed, its course had given general satisfaction. After what they all had seen,

in relation to the gentlemen holding the highest appointment in the Executive Department, under the President, he would take this opportunity to say, that having been a member of the House of Representatives for six years, during the far greater part of which time Mr. Clay had presided in that House, he was most happy in being able, in a manner less formal than by concurring in the usual vote of thanks, to express his own opinion of his liberality, independence, and honorable feeling. And he would take this occasion also to add, if his opinion could be of any value in such a case, that he thought nothing more unfounded than that that gentleman owed his present situation to any unworthy compromise or arrangement whatever. He owed it to his talent, to his prominent standing in the community, to his course of public service, not now a short one, and to the high estimation in which he stands with that part of the country to which he belongs.

Remarks, Mr. Webster proceeded to say, had been made from the Chair, very kind and partial, as to the manner in which he had discharged the duties which he owed to his constituents, in the House of Representatives. He wished to say, that if he had been able to render any, the humblest services, either to the public or his constituents, in that place, it was owing wholly to the liberal manner in which his efforts there had been received.

Having alluded to the Inaugural Address, he did not mean in the slightest degree to detract from its merits, when he now said, that in his opinion, if either of the other candidates had succeeded in the election, he also would have adopted a liberal course of policy. He had no reason to believe that the sentiments of either of those gentlemen were, in this respect, narrow or contracted. He fully believed the contrary, in regard to both of them; but if they had been otherwise, he thought still, that expediency or necessity, would have controlled their inclinations.

I forbear, said Mr. W., from pursuing these remarks farther. I repeat, that I do not complain of those who have hitherto thought, or who still think, that party organization is necessary to the public good. I do not question their motives; and I wish to be tolerant even to those who think that toleration ought not to be indulged.

It is said, sir, that prosperity sometimes hardens the heart. Perhaps, also, it may sometimes have a contrary effect, and elevate and liberalize the feelings. If this can ever be the result of such a cause, there is certainly in the present condition of the country enough to inspire the most grateful and the kindest feelings. We have a common stock both of happiness and of distinction, of which we are all entitled as citizens of the country to partake. We may all rejoice in the general prosperity, in the peace and security which we enjoy, and in the brilliant success which has thus far attended our republican institutions. These are circumstances which may well excite in us all a noble pride. Our civil and political institutions, while they answer for us all the great ends designed by them, furnish at the same time an example to others, and diffuse blessings beyond our own limits.—In whatever part of the globe men are found contending for political liberty, they look to the United States

with a feeling of brotherhood, and put forth a claim of kindred. The South American States, especially, exhibit a most interesting spectacle. Let the great men who formed our constitutions of government, who still survive, and let the children of those who have gone to their graves console themselves with the reflection, that whether they have risen or fallen in the little contests of party, they have not only established the liberty and happiness of their own native land, but have conferred blessings beyond their own country, and beyond their own thoughts, on millions of men, and on successions of generations. Under the influence of these institutions, received and adopted in principle, from our example, the whole southern continent has shaken off its colonial subjection.—A new world, filled with fresh and interesting nations, has risen to our sight. America seems again discovered; not to geography, but to commerce, to social intercourse, to intelligence, to civilisation, and to liberty. Fifty years ago, some of those who now hear me, and the fathers of many others; listened in this place, to those mighty masters, Otis and Adams. When they then uttered the spirit stirring sounds of Independence and Liberty, there was not a foot of land on the continent inhabited by civilized man, that did not acknowledge the dominion of European power. Thank God, at this moment, from us to the south pole, and from sea to sea, there is hardly a foot that does.

And, sir, when these States, thus newly disenthralled and emancipated, assume the tone, and bear the port of independence, what language, and what ideas do we find associated, with their new acquired liberty? They speak, sir, of Constitutions, of Declarations of Rights, of the Liberty of the Press, of a Congress, and of Representative Government. Where, sir, did they learn these? And when they have applied, to their great leader, and the founder of their States, the language of praise and commendation, till they have exhausted it—when unsatisfied gratitude can express itself no otherwise, do they not call him their WASHINGTON? Sir, the Spirit of Continental Independence, the Genius of American Liberty, which in earlier times tried her infant voice in the halls and on the hills of New England, utters it now, with power that seems to wake the dead, on the plains of Mexico, and along the sides of the Andes.

> "Her path, where'er the Goddess roves,
> Glory pursues, and generous shame,
> The unconquerable mind, and Freedom's holy flame."

There is one other point of view, sir, in regard to which I will say a few words, though perhaps at some hazard of misinterpretation.

In the wonderful spirit of improvement and enterprise which animates the country, we may be assured that each quarter will naturally exert its power in favor of objects in which it is interested. This is natural and unavoidable. Each portion, therefore, will use its best means. If the West feels a strong interest in clearing the navigation of its mighty streams, and opening roads through its vast forests; if the South is equally zealous to push the production and

augment the prices of its great staples, it is reasonable to expect, that these objects will be pursued by the best means which offer. And it may therefore well deserve consideration, whether the commercial, and navigating, and manufacturing interests of the North do not call on us to aid and support them, by united counsels, and united efforts. But I abstain from enlarging on this topic. Let me rather say, sir, that in regard to the whole country, a new era has arisen. In a time of peace, the proper pursuits of peace engage society with a degree of enterprise, and an intenseness of application, heretofore unknown. New objects are opening, and new resources developed, on every side. We tread on a broader theatre; and if instead of acting our parts, according to the novelty and importance of the scene, we waste our strength in mutual crimination and recrimination about the past, we shall resemble those navigators, who having escaped from some crooked and narrow river to the sea, now that the whole ocean is before them, should, nevertheless, occupy themselves with the differences which happened as they passed along among the rocks and the shallows, instead of opening their eyes to the wide horizon around them, spreading their sail to the propitious gale that woos it, raising their quadrant to the sun, and grasping the helm, with the conscious hand of a master

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SPEECH

IN FANEUIL HALL, ON THURSDAY, JUNE 5th, 1828.

At a public dinner given him, by the citizens of Boston, as a mark of respect for his public services as Senator of the United States, and late their Representative in Congress,—after the annunciation of the following toast:—"*Our distinguished Guest—worthy the noblest homage, which freemen can give, or a freeman receive: the homage of their hearts:*" Mr. Webster rose and said:—

Mr. Chairman,—The honor conferred by this occasion, as well as the manner in which the meeting has been pleased to receive what has now been proposed to them from the Chair, requires from me a most respectful acknowledgement, and a few words of honest and sincere thanks. I should, indeed, be lost to all just feeling, or guilty of a weak and peurile affectation, if I should fail to manifest the emotions which are excited by these testimonials of regard, from those among whom I live, who see me oftenest, and know me best. If the approbation of good men be an object fit to be pursued, it is fit to be enjoyed; if it be, as it doubtless is, one of the most stirring and invigorating motives, which operate upon the mind, it is, also, among the richest rewards which console and gratify the heart.

I confess myself particularly touched and affected, Mr. President, and gentlemen, by the kind feeling which you manifest towards me, as your fellow citizen, your neighbour, and your friend. Respect and confidence, in these relations of life, lie at the foundation of all valuable character; they are as essential to solid and permanent reputation, as to durable and social happiness. I assure you, sir, with the utmost sincerity, that there is nothing which could flow from human approbation or applause, no distinction, however high or alluring, no object of ambition, which could possibly be brought within the horizon of my view, that would tempt me, in any degree, justly to forfeit the attachment of my private friends, or surrender my hold, as a citizen, and a neighbour, on the confidence of the community in which I live; a community, to which I owe so much, in the bosom of which I have enjoyed so much, and where I still hope to remain, in the exercise of mutual good offices, and the interchange of mutual good wishes, for the residue of life.

The commendation which the meeting has bestowed on my attempts at public service, I am conscious, is measured rather by their own kindness, than by any other standard. Of those attempts, no one can think more humbly than I do. The affairs of the general

government, foreign and domestic, are vast, and various, and complicated. They require from those who would aspire to take a leading part in them an amount, a variety, and an accuracy of information, which even if the adequate capacity were not wanting, are not easily attained, by one whose attention is necessarily mainly devoted to the duties of an active and laborious profession. For this as well as many other reasons, I am conscious of having discharged my public duties, in a manner no way entitling them to the degree of favor which has now been manifested.

And this manifestation of favor and regard is the more especially to be referred to the candor and kindness of the meeting, on this occasion, since it is well known, that in a recent instance, and in regard to an important measure, I have felt it my duty to give a vote, in respect to the expediency and propriety of which considerable difference of opinion exists, between persons equally entitled to my regard and confidence.—The candid interpretation which has been given to that vote, by those who disapproved it, and the assembling together here, for the purpose of this occasion, of those who felt pain, as well as those who felt pleasure, at the success of the measure for which the vote was given, afford ample proof, how far unsuspected uprightness of intention, and the exercise of an independent judgment may be respected, even by those who differ from the results to which that exercise of judgment has arrived. There is no class of the community for whose interests I have ever cherished a more sincere regard, than that on whose pursuits some parts of the measure alluded to bears with great severity. They are satisfied, I hope, that in supporting a measure in any degree injurious to them, I must have been governed by other paramount reasons, satisfactory to my own conscience; and that the blow, inflicted on their interests, was felt by me almost as painfully and heavily, as it could be by those on whom it immediately fell. I am not now about to enter into the reason of that vote, or to explain the necessity under which I found myself placed by a most strange and unprecedented manner of legislation, of taking the evil of a public measure for the sake of its good; the good and the bad provisions relating to different subjects, having not the slightest connexion with each other, yet yoked together, and kept together, for reasons and purposes which I need not state, as they have been boldly avowed, and are now before the public.

It was my misfortune, sir, on that occasion to differ from my most estimable and worthy colleague. And yet probably our difference was not so broad as it might seem. We both saw, in the measure, something to approve, and something to disapprove. If it could have been left to us to mould and to frame it according to our opinions of what the good of the country required, there would have been no diversity of judgment between us, as to what should have been retained and what rejected. The only difference was, when the measure had assumed its final shape, whether the good it contained so far preponderated over its acknowledged evil, as to justify the reception and support of the whole together. On a point of this sort, and under circumstances such as those in which we were placed, it is not strange that different minds should incline different ways. It gives me great pleasure to bear testimony to the constancy, the intelligence

and the conscious fidelity with which my colleague discharged his public duty, in reference to this subject. I am happy also to have the opportunity of saying, that if the bill had been presented to me, in the form it was when it received a negative vote from the distinguished gentleman who represents this District, my own opinion of it would have entirely concurred with his, and I should have voted in the same manner.

The meeting will indulge me with one further remark, before parting from this subject. It is only the suggestion, that in the place I occupied I was one of the Representatives of the whole Commonwealth. I was not at liberty to look exclusively to the interests of the District in which I live, and which I have heretofore had the high honor of representing. I was to extend my view from Barnstable to Berkshire; to comprehend in it a proper regard for all interests, and a proper respect for all opinions. Looking to the aggregate of all the interests of the Commonwealth, and regarding the general current of opinion, so far as that was properly to be respected, I saw—at least I thought I saw—my duty to lie in the path which I pursued. The measure is adopted. Its consequences, for good or evil, must be left to the results of experience. In the meantime, I refer the propriety of the vote which I gave, with entire submission, and with the utmost cheerfulness also, to the judgment of the good people of the Commonwealth.

On some other subjects, Mr. President, I had the good fortune to act in perfect unison with my colleague, and with every Representative of the State. On one, especially, the success of which, I am sure, must have gratified every one who hears me. I could not, sir, have met this meeting here, I could not have raised my voice in Faneuil Hall—you would have awed me down—if you had not, the pictures of Patriots which adorn these walls would have frowned me into silence, if I had refused either my vote or my voice to the cause of the officers and soldiers of the revolutionary army. That measure, mixed up of justice, and charity, and mercy, is at last accomplished. The survivors, among those who fought our revolutionary battles, under an engagement to see the contest through, are at length provided for, not sumptuously, not extravagantly, but in a manner to place them, in their old age, beyond the reach of absolute want. Solace, also, has been administered to their feelings, as well as to their necessities. They are not left to count their scars, or to experience the pain of wounds, inflicted half a century ago, in their country's service, without some token, that they are yet held in grateful remembrance—a gratifying proof of respect for the services of their youth and manhood quickens the pulsations of patriotism, in veteran bosoms; and as they may now live, beyond the reach of absolute want, so they will have the pleasure of closing life, when that time for closing it shall come, which must come, with the happy consciousness of meritorious services, gratefully recompensed.

Another subject, now becoming exceedingly interesting, was, in various forms, presented to Congress at the last session; and in regard to which, I believe, there is, substantially, a general union of opinion among the members from this Commonwealth. I mean what is commonly called Internal Improvements. The great and

growing importance of this subject may, I hope, justify a few remarks, relative to it, on the present occasion.

It was evident to all persons of much observation, at the close of the late war, that the condition and prospects of the United States had become essentially changed, in regard to sundry great interests of the country. Almost from the commencement of the government, down near to the commencement of that war, the United States had occupied a position of singular and extraordinary advantage. They had been at peace, while the powers of Europe had been at war. The harvest of neutrality had been to them rich and ample; and they had reaped it with skill and diligence. Their agriculture and commerce had both felt sensibly, the benefit arising from the existing state of the world. Bread was raised for those whose hands were otherwise employed than in the cultivation of the field, and the seas were navigated, for account of such, as being belligerents, could not safely navigate them for themselves. These opportunities for useful employment were all seized and enjoyed, by the enterprise of the country; and a high degree of prosperity was the natural result.

But with general peace, a new state of things arose. The European states at once turned their own attention to the pursuits, proper for their new situation, and sought to extend their own agricultural, manufacturing, and commercial interests. It was evident, that thenceforward, instead of enjoying the advantages peculiar to neutrality, in times of war, a general competition would spring up, and nothing was to be expected without a struggle. Other nations would now raise their own bread, and as far as possible, transport their own commodities; and the export trade, and the carrying trade of this country, were, therefore, certain to receive new and powerful competition, if not sudden and violent checks. It seemed reasonable, therefore, in this state of things, to turn our thoughts inwards, to explore the hitherto unexplored resourses of our own country, to find out, if we could, new diversifications of industry, new subjects for the application of labor at home. It was fit to consider how far home productions could, properly, be made to furnish activity to home supply; and since the country stretched over so many parallels of latitude and longitude, abounding, of course, in the natural productions proper to each, it was of the highest importance to inquire what means existed of establishing free and cheap intercourse, between those parts, thereby bringing the raw material, abounding in one, under the action of the productive labor which was found in another. Roads and Canals, therefore, were seen to be of the first consequence. And then the interesting question arose; how far it was constitutionally lawful, and how far expedient, for the general government to give aid and succour to the business of making roads and canals, in conjunction with individual enterprise, or State undertakings. I am among those who have held the opinion that if any object of that kind be of general and national importance, it is within the scope of the powers of the government; though I admit it to be a power which should be exercised with very great care and discretion. Congress has power to *regulate* commerce, both internal and external; and whatever might have been thought to be the literal interpretation of these terms, we know the construction to have been,

from the very first assembling of Congress, and by the very men who framed the Constitution, that the regulation of commerce comprehended such measures as were necessary for its support, its improvement, its advancement; and justified such expenditures as Piers, Beacons, and Lighthouses, and the clearing out of harbours required. Instances of this sort, in the application of the general revenues, have been frequent, from the commencement of the government. As the same power, precisely, exists in relation to internal as to external trade, it was not easy to see why like expenditures might not be justified, when made on internal objects. The vast regions of the West are penetrated by rivers, to which those of Europe are but as rills and brooks.—But the navigation of these noble streams, washing, as they do, the margin of one third of the States of the Union, was obstructed by obstacles, capable of being removed, and yet not likely to be removed, but by the power of the general government. Was this a justifiable object of expenditure from the national treasury? Without hesitation, I have thought it was. A vast chain of lakes, if it be not more proper to call them a succession of inland seas, stretches into the deep interior of this northern part of the continent, as if kindly placed there by Providence to break the continuity of the land, and afford the easier and readier intercourse of water conveyance.—But these vast lakes required, also, harbours, and lights, and breakwaters? And were these lawful objects of national legislation? To me, certainly, they have appeared to be such, as clearly as if they were on the Atlantic border.

In most of the new States of the West, the United States are yet proprietors of vast bodies of land. Through some of these States, and sometimes through these same public lands, the local authorities have prepared to carry expensive canals, for the general benefit of the country. Some of these undertakings have been attended with great expense, have subjected the States, where enterprising spirit has begun and carried them on, to large debts, and heavy taxation. The lands of the United States being exempted from all taxation, of course bear no part of this burden. Looking to the United States, therefore, as a great landed proprietor, essentially benefited by these improvements, I have felt no difficulty in voting for the appropriation of parts of these lands, as a reasonable contribution by the United States to these general objects.

Most of the subjects to which I have referred, are much less local, in their influence, and importance, than they might seem. The breakwater in the Delaware, useful to Philadelphia, is useful also to all the ship-owners in the United States, and indeed to all interested in commerce, especially that great branch, the coastwise commerce. If the mouths of the southern rivers be deepened and improved, the neighbouring cities are benefited, but so also are the ships which visit them; and if the Mississippi and Ohio be rendered more safe for navigation, the great markets of consumption along their shores are the more readily and cheaply approached by the products of the Factories and the Fisheries of New England.

It is my opinion, Mr. President, that the present government cannot be maintained but by administering it on principles as wide and broad as the country over which it extends. I mean, of course, no

extension of the powers which it confers; but I speak of the spirit with which those powers should be exercised. If there be any doubts, whether so many republics, covering so great a portion of the globe, can be long held together under this Constitution, there is no doubt in my judgment, of the impossibility of so holding them together by any narrow, contracted, local, or selfish system of legislation. To render the Constitution perpetual, (which God grant it may be) it is necessary that its benefits should be practically felt, by all parts of the country, and all interests in the country. The East and the West, the North and the South, must all see their own welfare protected and advanced by it. While the eastern frontier is defended by fortifications, its harbours improved, and commerce defended by a naval force, it is right and just that the region beyond the Alleghany should receive fair consideration and equal attention, in any object of public improvement, interesting to itself, and within the proper power of the government.—These, sir, are, in brief, the general views by which I have been governed, on questions of this kind; and I trust they are such as this meeting does not disapprove.

I would not trespass farther upon your attention, if I did not feel it my duty to say a few words on the condition of public affairs under another aspect. We are on the eve of a new election for President; and the manner in which the existing administration is attacked might lead a stranger to suppose, that the Chief Magistrate had committed some flagrant offence against the country, threatened to overturn its liberties, or establish a military usurpation. On a former occasion I have, in this place, expressed my opinion of the principle, upon which the opposition to the administration is founded; without any reference whatever to the person who stands as its apparent head, and who is intended by it to be placed in the chief executive chair. I think that principle exceedingly dangerous and alarming, inasmuch as it does not profess to found opposition to the government on the measures of government, but to rest it on other causes, and those mostly personal. There is a combination, or association, of persons holding the most opposite opinions, both on the constitutional powers of the government, and on the leading measures of public concern, and uniting in little, or in nothing, except the will to dislodge power from the hands in which the country has placed it. There has been no leading measure of the government, with perhaps a single exception, which has not been strenuously maintained by many, or by some of those, who co-operate, altogether, nevertheless, in pursuit of the object which I have mentioned. This is but one of many proofs that the opposition does not rest in the principle of disapprobation of the measures of government. Many other evidences of the same truth, might be adduced easily. A remarkable one is, that while one ground of objection to the administration is urged in one place, its precise opposite is pressed in another. Pennsylvania and South Carolina, for example, are not treated with the same reasons for a change of administration; but with flatly contradictory reasons. In one, the administration is represented as bent on a particular system, oppressive to that State, and which must ultimately ruin it; and for that reason there ought to be a change. In the other, that system, instead of being ruinous, is salutary, is necessary,

is indispensable. But the administration is but half in earnest in supporting it, and for that reason there ought to be a change.

Reflecting men have always supposed, that if there were a weak point in the Federal Constitution, it was in the provision for the exercise of the Executive power. And this, perhaps, may be considered as rendered more delicate and difficult, by the great augmentation of the number of the States. We must expect that there will often be, as there was on the last election, several candidates for the Presidency. All but one, of course, must be disappointed; and if the friends of all such, however otherwise divided, are immediately to unite, and to make common cause against him who is elected, little is ever to be expected but embarrassment and confusion.—The love of office will, ere long, triumph over the love of country; and party and faction usurp the place of wisdom and patriotism. If the contest for the executive power is thus to be renewed every four years; if it is to be conducted as the present has been conducted; and if every election is to be immediately followed, as the last was followed, by a prompt union of all whose friends are not chosen, against him who is, there is, in my judgment, danger, great danger, that this great experiment of confederated government may fail, and that even those of us, who are not among the youngest, may behold its catastrophe.

It cannot have escaped the notice of any gentleman present, that in the course of the controversy, pains have been taken to affect the character and the success of the present chief magistrate, by exciting odium towards that part of the country in which he was born and to which he belongs. Sneers, contumely, reproach, everything that gentlemen could say, and many things which gentlemen could not say, have been uttered against New England.—I am sure, sir, every true son of New England must receive such things, when they come from sources which ought to be considered respectable, with a feeling of just indignation; and when proceeding from elsewhere, with contempt. If there be one among ourselves, who can be induced, by any motives, to join in this cry against New England, he disgraces the New England mother who bore him, the New England father who bred and nurtured him, and the New England atmosphere which first supplied respiration to those lungs now so unworthily employed in uttering calumnies against his country. Persons, not known till yesterday, and having little chance of being remembered beyond to-morrow, have affected to draw a distinction between the Patriot States and the States of New England; assigning the last to the present President, and the rest to his rival. I do not wonder, sir, at the indignation and scorn which I perceive the recital of this injustice produces here. Nothing else was to be expected. Faneuil Hall is not a place where one is expected to hear with indifference that New England is not to be counted among the Patriot States. The Patriot States! What State was it, sir, that was patriotic when patriotism cost something? Where but in New England, did the great drama of the revolution open? Where, but on the soil of Massachusetts, was the first blood poured out, in the cause of Liberty and Independence? Where, sooner than here, where earlier than within the walls which now surround us, was patriotism found, when

to be patriotic was to endanger houses and homes, and wives and children, and to be ready also, to pay for the reputation of patriotism, by the sacrifice of blood and of life?

Not farther to refer to her revolutionary merits, it may be truly said that New England did her part, and more than her part, in the establishment of the present government, and in giving effect to the measures and the policy of the first President. Where, sir, did the measures of Washington find the most active friends, and the firmest support?—Where are the general principles of his policy most widely spread, and most deeply seated?—If, in subsequent periods, different opinions have been held, by different portions of her people, New England has, nevertheless, been always obedient to the laws, even when she most severely felt their pressure, and most conscientiously doubted, or disbelieved their propriety. Every great and permanent institution of the country, intended for defence, or for improvement, has met her support. And if we look to recent measures, on subjects highly interesting to the community, and especially some portions of it, we see proofs of the same steady and liberal policy. It may be said, with entire truth, and it ought to be said, and ought to be known, that no one measure for internal improvement has been carried through Congress, or could have been carried, but by the aid of New England votes. It is for those most deeply interested in subjects of that sort to consider in season, how far the continuance of the same aid is necessary for the further prosecution of the same objects. From the interference of the general government in making roads and canals, New England has as little to hope or expect as any part of the country. She has hitherto supported them, upon principle, and from a sincere disposition to extend the blessings and the beneficence of the government. And, sir, I confidently believe that those most concerned in the success of these measures, feel towards her respect and friendship. They feel that she has acted fairly and liberally, wholly uninfluenced by selfish or sinister motives. Those, therefore, who have seen, or thought they saw, an object to be attained by exciting dislike and odium towards New England, are not likely to find quite so favorable an audience as they have expected. It will not go for quite so much as wished, to the disadvantage of the President, that he is a native of Massachusetts. Nothing is wanting, but that we, ourselves, should entertain a proper feeling on this subject, and act with a just regard to our own rights and our own duties. If I could collect around me the whole population of New England, or if I could cause my voice to be heard over all her green hills, or along every one of her pleasant streams, in the exercise of true filial affection, I would say to her, in the language of the great master of the maxims of life and conduct.

> "This above all,—To thine own self be true
> And it must follow, as the night the day,
> Thou canst not then be false to any man."

Mr. President,—I have delayed you too long. I beg to repeat my thanks for the kindness which has been manifested towards me, by my fellow citizens, and to conclude by reciprocating their good wishes.

The City of Boston. Prosperity to all her interests, and happiness to all her citizens.

ARGUMENT

IN THE CASE, THE TRUSTEES OF DARTMOUTH COLLEGE *vs.* WILLIAM H. WOODWARD, BEFORE THE SUPREME COURT OF THE UNITED STATES, ON THE 10th DAY OF MARCH, 1818.

[The action, The Trustees of Dartmouth College *vs.* William H. Woodward, was commenced at the Court of Common Pleas, Grafton County, State of New Hampshire, February Term, 1817. The declaration was Trover for the Books of Record, original Charter, common Seal and other corporate property of the College. The conversion was alleged to have been made on the 7th day of October, 1816. The proper pleas were filed, and by consent, the cause was carried directly to the Superior Court, by Appeal, and entered May Term 1817. The general issue was pleaded by the defendant and joined by the plaintiffs. The facts in the case were then agreed upon, by the parties, and drawn up in the form of a Special Verdict, reciting the Charter of the College and the acts of the Legislature of the State, passed June and December 1816, by which the said Corporation of Dartmouth College was *enlarged* and *improved* and the said Charter *amended*.

The question made in the case was, whether those acts of the Legislature were valid and binding upon the Corporation, without their acceptance or assent, and not repugnant to the Constitution of the United States. If so, the verdict found for the defendant; otherwise, it found for the plaintiffs.

The cause was continued to the September Term of the Court in Rockingham County, where it was argued; and at the November Term of the same year, in Grafton County, the opinion of the Court was delivered by Chief Justice Richardson, in favor of the validity and constitutionality of the acts of the Legislature; and judgment was accordingly entered for the defendant on the Special Verdict.

Thereupon a Writ of Error was sued out by the original plaintiffs to remove the cause to the Supreme Court of the United States; where it was entered at the Term of the Court holden at Washington on the first Monday of February, A. D. 1818.

The cause came on for argument on the 10th day of March 1818, before all the judges. It was argued by Mr. Webster and Mr. Hopkinson for the plaintiffs in error, and by Mr. Holmes and the Attorney General for the defendant in error.

At the Term of the Court holden February 1819, the opinion of the judges was delivered, declaring the acts of the Legislature unconstitutional and invalid, and reversing the judgment of the State Court.]

ARGUMENT OF MR. WEBSTER FOR PLAINTIFFS IN ERROR.

The general question is, whether the acts of the 27th of June, and of the 18th and 26th of December, 1816, are valid and binding on the rights of the plaintiffs, *without their acceptance or assent.*

The charter of 1769 created and established a corporation, to consist of twelve persons, and no more; to be called the "Trustees of Dartmouth College." The preamble to the charter recites, that it is granted on the application and request of the Rev. Eleazer

Wheelock: That Dr. Wheelock, about the year 1754, established a charity school, at his own expense, and on his own estate and plantation: That, for several years, through the assistance of well disposed persons in America, granted at his solicitation, he had clothed, maintained, and educated a number of the native Indians, and employed them afterwards as missionaries and schoolmasters among the savage tribes: That his design promising to be useful, he had constituted the Rev. Mr. Whitaker to be his attorney, with power to solicit contributions, in England, for the further extension and carrying on of his undertaking; and that he had requested the Earl of Dartmouth, Baron Smith, Mr. Thornton, and other gentlemen, to receive such sums as might be contributed, in England, towards supporting his school, and to be trustees thereof, for his charity; which these persons had agreed to do. And thereupon Dr. Wheelock had executed to them a deed of trust, in pursuance to such agreement, between him and them, and for divers good reasons, had referred it to these persons, to determine the place in which the school should be finally established: And to enable them to form a proper decision on this subject, had laid before them the several offers which had been made to him by the several governments in America, in order to induce him to settle and establish his school within the limits of such governments for their own emolument, and the increase of learning in their respective places, as well as for the furtherance of his general original design. And in as much as a number of the proprietors of lands in New Hampshire, animated by the example of the governor himself and others, and in consideration that without any impediment to its original design, the school might be enlarged and improved, to promote learning among the English, and to supply ministers to the people of that province, had promised large tracts of land, provided the school should be established in that province, the persons before mentioned, having weighed the reasons in favor of the several places proposed, had given the preference to this province, and these offers; that Dr. Wheelock therefore represented the necessity of a legal incorporation, and proposed that certain gentlemen in America, whom he had already named and appointed in his will, to be trustees of his charity after his decease, should compose the corporation. Upon this recital, and in consideration of the laudable original design of Dr. Wheelock, and willing that the best means of education be established in New Hampshire, for the benefit of the province, the king grants the charter, by the advice of his provincial council.

The substance of the facts thus recited, is, that Dr. Wheelock had founded a charity, on funds owned and procured by himself; that he was at that time the sole dispenser and sole administrator, as well as the legal owner of these funds; that he had made his will, devising this property in trust, to continue the existence and uses of the school, and appointed trustees; that, in this state of things, he had been invited to fix his school, permanently, in New Hampshire, and to extend the design of it to the education of the youth of that province; that before he removed his school, or accepted this invitation, which his friends in England had advised him to accept, he applied for a charter, to be granted, not to whomsoever the king or govern-

ment of the province should please, but to such persons as he named and appointed, viz. the persons whom he had already appointed to be the future trustees of his charity by his will.

The charter, or letters patent, then proceed to create such a corporation, and to appoint twelve persons to constitute it, by the name of the "Trustees of Dartmouth College;" to have perpetual existence, as such corporation, and with power to hold and dispose of lands and goods, for the use of the college, with all the ordinary powers of corporations. They are in their discretion to apply the funds and property of the college to the support of the president, tutors, ministers, and other officers of the college, and such missionaries and schoolmasters as they may see fit to employ among the Indians. There are to be twelve trustees forever, *and no more;* and they are to have the right of filling vacancies occurring in their own body. The Rev. Mr. Wheelock is declared to be the founder of the college, and is, by the charter, appointed first president, with power to appoint a successor by his last will. All proper powers of government, superintendence, and visitation, are vested in the trustees. They are to appoint and remove all officers at their discretion; to fix their salaries, and assign their duties: and to make all ordinances, orders, and laws for the government of the students. And to the end that the persons who had acted as depositaries of the contributions in England, and who had also been contributors themselves, might be satisfied of the good use of their contributions, the president was annually, or when required, to transmit to them an account of the progress of the institution and the disbursements of its funds, so long as they should continue to act in that trust.— These letters patent are to be good and effectual, in law, *against the king, his heirs and successors forever*, without further grant or confirmation; and the trustees are to hold all and singular these privileges, advantages, liberties, and immunities to them and to their successors forever.

No funds are given to the college by this charter. A corporate existence and capacity are given to the trustees, with the privileges and immunities which have been mentioned, to enable the founder and his associates the better to manage the funds which they themselves had contributed, and such others as they might afterwards obtain.

After the institution, thus created and constituted, had existed, uninterruptedly and usefully, nearly fifty years, the legislature of New Hampshire passed the acts in question.

The first act makes the twelve trustees under the charter, and nine other individuals to be appointed by the governor and council, a corporation, by a new name; and to this new corporation transfers all the *property, rights, powers, liberties and privileges* of the old corporation; with further power to establish new colleges and an institute, and to apply all or any part of the funds to these purposes subject to the power and control of a board of twenty-five overseers, to be appointed by the governor and council.

The second act makes further provisions for executing the objects of the first, and the last act authorises the defendant, the treasurer of the plaintiffs, to retain and hold their property, against their will.

If these acts are valid, the old corporation is abolished, and a new one created. The first act does, in fact, if it can have any effect, *create a new corporation*, and transfer to it all the property and franchises of the old. The two corporations are not the same, in anything which essentially belongs to the existence of a corporation. They have different names, and different powers, rights, and duties Their organization is wholly different. The powers of the corporation are not vested in the same, or similar hands. In one, the trustees are twelve, and no more. In the other, they are twenty-one. In one, the power is in a single board. In the other, it is divided between two boards. Although the act professes to include the old trustees in the new corporation, yet that was without their assent, and against their remonstrance; and no person can be compelled to be a member of such a corporation against his will. It was neither expected nor intended, that they should be members of the new corporation. The act itself treats the old corporation as at an end, and going on the ground that all its functions have ceased, it provides *for the first meeting and organization of the new corporation.* It expressly provides, also, that the new corporation shall have and hold all the property of the old; a provision which would be quite unnecessary upon any other ground, than that the old corporation was dissolved. But if it could be contended, that the effect of these acts was not entirely to abolish the old corporation, yet it is manifest that they impair and invade the rights, property, and powers of the trustees under the charter, *as a corporation*, and the legal rights, privileges, and immunities which belong to them, *as individual members* of the corporation.

The twelve trustees were the *sole* legal owners of all the property acquired under the charter. By the acts others are admitted; against *their* will, to be joint owners. The twelve individuals, who are trustees, were possessed of all the franchises and immunities conferred by the charter.—By the acts, *nine* other trustees, and *twenty-five* overseers are admitted against their will, to divide these franchises and immunities with them.

If either as a corporation, or as individuals, they have any *legal rights*, this forcible intrusion of others violates those rights, as manifestly as an entire and complete ouster and dispossession. These acts alter the whole constitution of the corporation. They affect the rights of the whole body as a corporation, and the rights of the individuals who compose it. They revoke corporate powers and franchises.—They alienate and transfer the property of the college to others. By the charter, the trustees had a right to fill vacancies in their own number. This is now taken away. They were to consist of twelve, and by express provision of no more. This is altered. They and their successors, appointed by themselves, were forever to hold the property. The legislature has found successors for them, before their seats are vacant. The powers and privileges, which the twelve were to exercise *exclusively*, are now to be exercised by others. By one of the acts, they are subjected to heavy penalties, if they exercise their offices, or any of those powers and privileges granted them by charter, and which they had exercised for fifty years. They are to be *punished* for not accepting the new

grant, and taking its benefits. This, it must be confessed, is rather a summary mode of settling a question of constitutional right. Not only are new trustees forced into the corporation, but new trusts and uses are created. The college is turned into a university. Power is given to create new colleges, and, to authorise any diversion of the funds, which may be agreeable to the new boards, sufficient latitude is given by the undefined power of establishing an *Institute*. To these new colleges, and this *Institute*, the funds contributed by the founder, Dr. Wheelock, and by the original donors, the Earl of Dartmouth and others, are to be applied, in plain and manifest disregard of the uses to which they were given.

The president, one of the old trustees, had a right to his office, salary, and emoluments, subject to the twelve trustees alone. His title to these is now changed, and he is made accountable to new masters. So also all the professors and tutors. If the legislature can at pleasure make these alterations and changes, in the rights and privileges of the plaintiffs, it may, with equal propriety, abolish these rights and privileges altogether. The same power which can do any part of this work, can accomplish the whole. And indeed, the argument on which these acts have been hitherto defended, goes altogether on the ground, that this is such a corporation as the legislature may abolish at pleasure; and that its members have no *rights, liberties, franchises, property or privileges*, which the legislature may not revoke, annul, alienate or transfer to others whenever it sees fit.

It will be contended by the plaintiffs *that these acts are not valid and binding on them, without their assent.* 1. Because they are against common right, and the constitution of New Hampshire. 2. Because they are repugnant to the constitution of the United States.

I am aware of the limits which bound the jurisdiction of the court in this case, and that on this record nothing can be decided, but the single question, whether these acts are repugnant to the constitution of the United States. Yet it may assist in forming an opinion of their true nature and character, to compare them with these fundamental principles, introduced into the state governments for the purpose of limiting the exercise of the legislative power, and which the constitution of New Hampshire expresses with great fulness and accuracy.

It is not too much to assert, that the legislature of New Hampshire would not have been competent to pass the acts in question, and to make them binding on the plaintiffs without their assent, even if there had been, in the constitution of New Hampshire, or of the United States, no special restriction on their power; because these acts are not the exercise of a power properly legislative.* Their object and effect is to take away, from one, rights, property, and franchises, and to grant them to another. This is not the exercise of a legislative power. To justify the taking away of vested rights, there must be a forfeiture; to adjudge upon and declare which, is the proper province of the judiciary. Attainder and confiscation are acts of sovereign power; not acts of legislation. The British parliament, among other unlimited powers, claims that of altering and vacating charters; not as an act of ordinary legislation, but of un-

* Calder et ux. v. Bull 3d Dallas 386.

controlled authority. It is theoretically omnipotent. Yet, in modern times, it has attempted the exercise of this power very rarely. In a celebrated instance, those who asserted this power in parliament, vindicated its exercise only in a case, in which it could be shown, 1st, That the charter in question was a charter of political power; 2. That there was a great and overruling state necessity, justifying the violation of the charter. 3. That the charter had been abused, and justly forfeited.* The bill affecting this charter did not pass. Its history is well known. The act which afterwards did pass, passed *with the assent of the corporation.* Even in the worst times this power of parliament to repeal and rescind charters, has not often been exercised. The illegal proceedings in the reign of Charles II. were under color of law. Judgments of forfeiture were obtained in the courts. Such was the case of the quo warranto against the city of London, and the proceedings by which the charter of Massachusetts was vacated.

The legislature of New Hampshire has no more power over the rights of the plaintiffs than existed, somewhere, in some department of government, before the revolution. The British parliament could not have annulled or revoked this grant as an act of ordinary legislation. If it had done it at all, it could only have been in virtue of that sovereign power, called omnipotent, which does not belong to any legislature in the United States. The legislature of New Hampshire has the same power over this charter, which belonged to the king, who granted it; and no more. By the law of England the power to create corporations is a part of the royal prerogative.† By the revolution, this power may be considered as having devolved on the legislature of the state, and it has accordingly been exercised by the legislature. But the king cannot abolish a corporation, or new model it, or alter its powers without its assent. This is the acknowledged and well known doctrine of the common law. "Whatever might have been the notion in former times," says lord Mansfield, "it is most certain now, that the corporations of the universities are lay corporations; and that the crown cannot take away from them any rights that have been formerly subsisting in them under old charters or prescriptive usage."‡ After forfeiture duly found, the king may regrant the franchises; but a grant of franchises already granted, and of which no forfeiture has been found, is void.

Corporate franchises can only be forfeited by trial and judgment.§ In case of a new charter or grant to an existing corporation, it may accept or reject it as it pleases.‖ It may accept such part of the grant as it chooses, and reject the rest.** In the very nature of things, a charter cannot be forced upon any body. No one can be compelled to accept a grant; and without acceptance, the grant is necessarily void.†† It cannot be pretended that the legislature, as successor to the king in this part of his prerogative, has any power to revoke, vacate or alter this charter. If, therefore, the

* Annual Regr. 1784, p. 160.—Parlia. Regr. 1783.—Mr. Burke's Speech on Mr. Fox's E. I. Bill. Burke's Works—2 Vol. p. 414. 417. 467. 468. 486.

† 1 Black. 472, 473. ‡ 3 Burr. 1656. § 3 T. R. 244. King vs. Pasmore.

‖ King vs. Vice Chancellor of Cambridge, 3. Burr. 1656. 3 T. R. 240.—Lord Kenyon

** Idem 1661, and King vs. Pasmore, ubi supra.

†† Ellis vs. Marshall, 2 Mass. Rep. 277. 1 Kyd. on corporations 65.—6.

legislature has not this power by any specific grant contained in the constitution; nor as included in its ordinary legislative powers; nor by reason of its succession to the prerogatives of the crown in this particular; on what ground would the authority to pass these acts rest; even if there were no prohibitory clauses in the constitution and the bill of rights?

But there *are* prohibitions in the constitution and bill of rights of New Hampshire, introduced for the purpose of limiting the legislative power, and protecting the rights and property of the citizens. One prohibition is "*that no person shall be deprived of his property, immunities or privileges, put out of the protection of the law, or deprived of his life, liberty or estate, but by judgment of his peers or the law of the land.*"

In the opinion, however, which was given in the court below, it is denied that the trustees under the charter, had any property, immunity, liberty or privilege, in this corporation within the meaning of this prohibition in the bill of rights. It is said that it is a *public corporation*, and *public property*. That the trustees have no greater interest in it, than any other individuals. That it is not private property, which they can sell, or transmit to their heirs; and that *therefore* they have no interest in it. That their office is a public trust like that of the governor, or a judge; and that they have no more concern in the property of the college, than the governor in the property of the state, or than the judges in the fines which they impose on the culprits at their bar. That it is nothing to them, whether their powers shall be extended or lessened; any more than it is to their honors, whether their jurisdiction shall be enlarged or diminished. It is necessary, therefore, to inquire into the true nature and charac ter of the corporation, which was created by the charter of 1769.

There are divers sorts of corporations; and it may be safely admitted that the legislature has more power over some than others.* Some corporations are for government and political arrangement; such for example as cities, counties and towns in New England. These may be changed and modified as public convenience may require, *due regard being always had to the rights of property.* Of such corporations, all who live within the limits are of course obliged to be members, and to submit to the duties which the law imposes on them as such. Other civil corporations are for the advancement of trade and business, such as banks, insurance companies, and the like. These are created not by general law, but usually by grant. Their constitution is special. It is such as the legislature sees fit to give, and the grantees to accept.

The corporation in question is not a *civil*, although it is a *lay* corporation. It is an *eleemosynary* corporation. It is a *private charity*, originally founded and endowed by an individual, with a charter obtained for it at *his* request, for the better administration of *his charity.* "The eleemosynary sort of corporations, are such as are constituted for the perpetual distributions of the free alms or bounty of the founder of them, to such persons as he has directed. Of this are all hospitals for the maintenance of the poor, sick and im potent; and all colleges both in our universities and out of them."†

* 1 Wooddeson 474. 1 Black. 467. † 1 Black. 471.

—Eleemosynary corporations are for the management of private property according to the will of the donors. They are private corporations. A college is as much a private corporation, as an hospital; especially, a college, founded as this was, by private bounty. A college is a charity.—"The establishment of learning," says lord Hardwicke, "is a charity, and so considered in the statute of Elizabeth. A devise to a college, for their benefit, is a laudable *charity*, and deserves encouragement."*

The legal signification of *a charity* is derived chiefly from the statute 43 Eliz. ch. 4. "Those purposes," says sir William Grant, "are considered *charitable* which that statute enumerates."† *Colleges* are enumerated, as *charities* in that statute. The government, in these cases, lends its aid to perpetuate the beneficent intention of the donor, by granting a charter, under which his private charity shall continue to be dispensed, after his death. This is done either by incorporating the *objects* of the charity, as for instance, the scholars in a college, or the poor in an hospital; or by incorporating those who are to be governors, or trustees of the charity.‡ In cases of the first sort the *founder* is, by the common law, *visitor*. In early times it became a maxim, that he who gave the property, might regulate it in future. *Cujus est dare, ejus est disponere.* This right of *visitation* descended from the founder to his heir, as a right of property, and precisely as his other property went to his heir; and in default of heirs, it went to the king, as all other property goes to the king for the want of heirs.—The right of visitation arises from the property. It grows out of the endowment. The founder may, if he please, part with it, at the time when he establishes the charity, and may vest it in others. Therefore if he chooses that governors, trustees or overseers should be appointed in the charter, he may cause it to be done, *and his power of visitation will be transferred to them*, instead of descending to his heirs. The persons thus assigned or appointed by the founder will be visitors, with all the powers of the founder, in exclusion of his heir.§ The right of visitation then accrues to them, as a matter of property, by the gift, transfer or appointment of the founder. This is a private right, which they can assert in all legal modes, and in which they have the same protection of the law as in all other rights. As visitors they may make rules, ordinances and statutes, and alter and repeal them, as far as permitted so to do by the charter.‖ Although the charter proceeds from the crown, or the government, it is considered as the will of the donor. It is obtained at his request. He imposes it as the rule which is to prevail in the dispensation of his bounty in all future times. The king, or government, which grants the charter is not thereby the founder, but he who furnishes the funds. The gift of the revenues is the foundation.** The leading case on this subject is Phillips vs. Bury, [reported in 1 Lord Raymond 5.—Comb. 265. —Holt 715.—1 Show. 360.—4 Mod. 106.—Skinn. 447.] This was an ejectment, brought to recover the rectory house, &c. of *Exeter College*, in Oxford. The question was whether the plaintiff or defendant was legal rector. Exeter College was founded by an in-

* 1 Ves. 537. † 9 Ves. Jun. 405. ‡ 1 Wood. 474.
§ 1 Black. 471. ‖ 2 Term Rep. 350—1. ** 1 Black. 480.

dividual, and incorporated by a charter granted by *Queen Elizabeth*. The controversy turned upon the power of the visitor, and in the discussion of the cause, the nature of college charters and corporations was very fully considered. Lord Holt's judgment, copied from his own manuscript, is in 2 Term Rep. 346. The following is an extract: "That we may the better apprehend the nature of a visitor, we are to consider, that there are in law two sorts of corporations aggregate: such as are for public government, and such as are for private charity. Those that are for the public government of a town, city, mystery, or the like, being for public advantage, are to be governed according to the laws of the land; if they make any particular private laws and constitutions, the validity and justice of them is examinable in the king's courts; of these there are no particular private founders, and consequently no particular visitor; there are no patrons of these; therefore if no provision be in the charter how the succession shall continue, the law supplieth the defect of that constitution, and saith it shall be by election; as mayor, aldermen, common council, and the like. But *private* and particular corporations for charity, founded and endowed by private persons, are subject to the private government of those who erect them; and, therefore, if there be no visitor appointed by the founder, the law appoints the founder and his heirs to be visitors, who are to act and proceed according to the particular laws and constitutions assigned them by the founder. It is now admitted on all hands, that the founder is patron, and, as founder, is visitor, if no particular visitor be assigned. So that patronage and visitation are necessary consequents one upon another; for this visitatorial power was not introduced by any canons or constitutions ecclesiastical (as was said by a learned gentleman whom I have in my eye, in his argument of this case:) it is an appointment of law; it ariseth from the property which the founder had in the lands assigned to support the charity; and as he is the author of the charity, the law gives him and his heirs a visitatorial power, that is, an authority to inspect the actions and regulate the behavior of the members that partake of the charity; for it is fit the members that are endowed, and that have the charity bestowed upon them, should not be left to themselves, but pursue the intent and design of him that bestowed it upon them. *Now indeed, where the poor, or those that receive the charity, are not incorporated, but there are certain trustees who dispose of the charity, there is no visitor; because the interest of the revenue is not vested in the poor that have the benefit of the charity, but they are subject to the orders and directions of the trustees.* But where they who are to enjoy the benefit of the charity are incorporated, there to prevent all perverting of the charity, or to compose differences that may happen among them, there is by law a visitatorial power; and it being a creature of the founder's own, it is reason that he and his heirs should have that power, unless by the founder it is vested in some other. Now there is no manner of difference between a college and an hospital, except only in degree; an hospital is for those that are poor, and mean, and low, and sickly: a college is for another sort of indigent persons; but it hath another intent, to study in, and breed up persons in the world, that have no otherwise to live;

but still it is as much within the reasons as hospitals. And if in an hospital the master and poor are incorporated, it is a college having a common seal to act by, although it hath not the name of a college, (which always supposeth a corporation) because it is of an inferior degree; and in the one case and in the other there must be a visitor, either the founder and his heirs, or one appointed by him; and both are eleemosynary." Lord Holt concludes his whole argument by again repeating, that that college was a *private corporation*, and that the founder had a right to appoint a visitor, and to give him such power as he saw fit.*

The learned Bishop Stillingfleet's argument in the same cause as a member of the house of lords, when it was there heard, exhibits very clearly the nature of colleges and similar corporations. It is to the following effect. "That this absolute and conclusive power of visitors, is no more than the law hath appointed in other cases, upon commissions of charitable uses: that the common law, and not any ecclesiastical canons, do place the power of visitation in the founder and his heirs, *unless he settle it upon others:* that although corporations for public government be subject to the courts of Westminster-Hall, which have no particular, or special visitors; yet corporations for charity, founded and endowed by private persons, are subject to the rule and government of those that erect them; but where the persons to whom the charity is given are not incorporated, there is no such visitatorial power, because the interest of the revenue is not invested in them; but where they are, the right of visitation ariseth from the foundation, and the founder may convey *it to whom and in what manner he pleases; and the visitor acts as founder, and by the same authority which he had, and consequently is no more accountable than he had been:* that the king by his charter can make a society to be incorporated so as to have the rights belonging to persons, as to legal capacities: that colleges, although founded by private persons, are yet incorporated by the king's charter; but although the kings by their charter made the colleges to be such in law, that is, to be legal corporations, yet they left to the particular founders authority to appoint what statutes they thought fit for the regulation of them. And not only the statutes, but the appointment of visitors was left to them, and the manner of government, and the several conditions, on which any persons were to be made or continue partakers of their bounty.† These opinions received the sanction of the house of lords, and they seem to be settled and undoubted law. Where there is a charter, vesting proper powers in *trustees*, or *governors*, they are *visitors;* and there is no control in anybody else; except only that the courts of equity or of law will interfere so far as to preserve the revenues and prevent the perversion of the funds and to keep the visitors within their prescribed bounds. "If there be a charter with proper powers, the charity must be regulated in the manner prescribed by the charter. There is no ground for the controlling interposition of the courts of chancery. The interposition of the courts therefore, in those instances in which the charities were founded on charters or by act of parliament, and a visitor, or governor and trustees appointed, must be referred to the general jurisdiction

* 1 Lord Ray. 9. † See Appendix No. 3. 1 Burn's Eccles. Law 443.

of the courts in all cases in which a trust conferred appears to have been abused, *and not to an original right to direct the management of the charity, or the conduct of the governors or trustees.*"*—"The original of all *visitatorial* power is the property of the donor, and the power every one has to dispose, direct and regulate his own property; like the case of patronage; *cujus est dare, &c. Therefore, if either the crown or the subject creates an eleemosynary foundation, and vests the charity in the persons who are to receive the benefit of it, since a contest might arise about the government of it, the law allows the founder or his heirs, or the person specially appointed by him to be visitor, to determine concerning his own creature. If the charity is not vested in the persons, who are to partake, but in trustees for their benefit, no visitor can arise by implication, but the trustees have that power.*"†

"There is nothing better established," says lord commissioner Eyre, "than that this court does not entertain a general jurisdiction, or regulate and control charities *established by charter*. There the establishment is fixed and determined; and the court has no power to vary it. If the governors established for the regulation of it, are not those who have the management of the revenue, this court has no jurisdiction, and if it is ever so much abused as far as it respects the jurisdiction of this court, it is without remedy; but if those established as governors, have also the management of the revenues, this court does assume a jurisdiction of necessity, so far as they are to be considered as trustees of the revenue."‡

"The foundations of colleges," says lord Mansfield, "are to be considered in two views, viz. as they are *corporations* and as they are *eleemosynary*. As eleemosynary, they are the creatures of the founder; he may delegate his power, either generally or specially; he may prescribe particular modes and manners, as to the exercise of part of it. If he makes a general visitor, (as by the general words *visitator sit*) the person so constituted has all incidental power; but he may be restrained as to particular instances. The founder may appoint a special visitor for a particular purpose and no further. The founder may make a general visitor; and yet appoint an inferior particular power, to be executed without going to the visitor in the first instance."§ And even if the king be founder, if he grant a charter, incorporating trustees and governors, *they are visitors*, and the king cannot visit.‖ A subsequent donation, or engrafted fellowship, falls under the same general visitatorial power, if not otherwise specially provided.**

In New England, and perhaps throughout the United States, eleemosynary corporations have been generally established in the latter mode; that is, by incorporating governors, or trustees, and vesting in them the right of visitation. Small variations may have been in some instances adopted; as in the case of Harvard College, where some power of inspection is given to the overseers, but not strictly speaking, a visitatorial power, which still belongs, it is appre-

* 2 Fonb. 205—6. † 1 Ves. 472. Green vs. Rutherforth, per Lord Hardwicke.

‡ Attorney General vs. Foundling Hospital, 2 Ves. Junr. 47. Vide also 2 Kyd on Corporations, 195. Cooper's Equity Pleading, 292.

§ St. John's College, Cambridge vs. Todington, 1 Burr. 200.

‖ Attorney General vs. Middleton, 2 Ves. 328.

** Green vs. Rutherforth, ubi supra. St. John's College, vs. Todington, ubi supra.

hended to the fellows, or members of the corporation. In general, there are many donors. A charter is obtained, comprising them all, or some of them, and such others as they choose to include, with the right of appointing their successors. They are thus the visitors of their own charity and appoint others, such as they may see fit, to exercise the same office in time to come. All such corporations are private. The case before the court is clearly that of an eleemosynary corporation. It is, in the strictest legal sense a private charity. In King vs. St. Catherine's Hall,* that college is called a *private eleemosynary lay corporation.* It was endowed by a private founder, and incorporated by letters patent. And in the same manner was Dartmouth College founded and incorporated. Dr. Wheelock is declared by the charter to be its founder. It was established by him, on funds contributed and collected by himself.

As such founder, he had a right of visitation, which he assigned to the trustees, and they received it by his consent and appointment, and held it under the charter.† He appointed these trustees visitors, and in that respect to take place of his heir; as he might have appointed devisees, to take his estate instead of his heir. Little, probably, did he think at that time, that the legislature would ever take away this property and these privileges, and give them to others. Little did he suppose, that this charter secured to him and his successors no legal rights. Little did the other donors think so. If they had, the college would have been, what the university is now, a thing upon paper, existing only in name.

The numerous academies in New England have been established substantially in the same manner. They hold their property by the same tenure, and no other. Nor has Harvard College any surer title than Dartmouth College. It may, to-day, have more friends; but to-morrow it may have more enemies. Its legal rights are the same. So also of Yale College; and indeed of all the others. When the legislature gives to these institutions, it may and does accompany its grants with such conditions as it pleases. The grant of lands by the legislature of New Hampshire to Dartmouth College, in 1789, was accompanied with various conditions. When donations are made, by the legislature, or others, to a charity already existing, without any condition, or the specification of any new use, the donation follows the nature of the charity. Hence the doctrine, that all eleemosynary corporations are private bodies. They are founded by private persons, and on private property. The public cannot be charitable in these institutions. It is not the money of the public, but of private persons, which is dispensed. It may be public, that is general, in its uses and advantages; and the state may very laudably add contributions of its own to the funds; but it is still private in the tenure of the property, and in the right of administering the funds.

If the doctrine laid down by lord Holt, and the house of lords in Phillips vs. Bury, and recognised and established in all the other cases, be correct, the property of this college was private property; it was vested in the trustees by the charter, and to be administered by them, according to the will of the founder and donors as ex-

* 4 Term Rep. 233. † Black. ubi supra.

pressed in the charter. They were also *visitors* of the charity, in the most ample sense. *They* had therefore, as they contend, *privileges*, *property*, and *immunities*, within the true meaning of the bill of rights. They had rights and still have them, which they can assert against the legislature, as well as against other wrong-doers. It makes no difference, that the estate is holden for certain trusts. The legal estate is still theirs. They have a right in the property, and they have a right of visiting and superintending the trust; and this is an object of legal protection, as much as any other right. The charter declares that the powers conferred on the trustees are "privileges, advantages, liberties, and immunities;" and that they shall be forever holden by them and their successors. The New Hampshire bill of rights declares that no one shall be deprived of his "property, privileges or immunities," but by judgment of his peers, or the law of the land. The argument on the other side is, that although these terms may mean something in the bill of rights, they mean nothing in this charter. But they are terms of legal signification, and very properly used in the charter. They are equivalent with *franchises*. Blackstone says that *franchise* and *liberty* are used as synonymous terms. And after enumerating other *liberties* and *franchises*, he says, "it is likewise a franchise for a number of persons to be incorporated and subsist as a body politic; with a power to maintain perpetual succession and do other corporate acts: *and each individual member of such a corporation is also said to have a franchise or freedom.*"*

Liberties is the term used in *magna charta* as including franchises, privileges, immunities, and all the rights which belong to that class Professor Sullivan says, the term signifies the "*privileges* that some of the subjects, whether single persons or bodies corporate, have above others by the lawful grant of the king; as the chattels of felons or outlaws, and the lands *and privileges of corporations.*"†

The privilege, then, of being a member of a corporation, under a lawful grant, and of exercising the rights and powers of such member, is such a privilege, *liberty* or *franchise*, as has been the object of legal protection, and the subject of a legal interest, from the time of *magna charta* to the present moment. The plaintiffs have such an interest in this corporation, individually, as they could assert and maintain in a court of law, not as agents of the public, but in their own right. Each trustee has a *franchise*, and if he be disturbed in the enjoyment of it, he would have redress, on appealing to the law, as promptly as for any other injury. If the other trustees should conspire against any one of them to prevent his equal right and voice in the appointment of a president or professor, or in the passing of any statute or ordinance of the college, he would be entitled to his action, for depriving him of his franchise. It makes no difference, that this property is to be holden and administered, and these franchises exercised for the purpose of diffusing learning. No principle and no case establishes any such distinction. The public may be benefitted by the use of this property. But this does not change the nature of the property, or the rights of the owners. The object of the charter may be public good; so

* 2 Black. Com. 37. † Sull. 41st Lect.

it is in all other corporations; and this would as well justify the resumption or violation of the grant in any other case as in this. In the case of an advowson, the use is public, and the right cannot be turned to any private benefit or emolument. It is nevertheless a legal private right, and the *property* of the owner, as emphatically as his freehold. The rights and privileges of trustees, visitors, or governors of incorporated colleges, stand on the same foundation. They are so considered, both by lord Holt and lord Hardwicke.*

To contend that the rights of the plaintiffs may be taken away, because they derive from them no pecuniary benefit, or private emolument, or because they cannot be transmitted to their heirs, or would not be assets to pay their debts, is taking an extremely narrow view of the subject. According to this notion, the case would be different, if, in the charter, they had stipulated for a commission on the disbursement of the funds; and they have ceased to have any interest in the property, because they have undertaken to administer it gratuitously.

It cannot be necessary to say much in refutation of the idea, that there cannot be a legal interest, or ownership, in anything which does not yield a pecuniary profit; as if the law regarded no rights but the rights of money, and of visible tangible property. Of what nature are all rights of suffrage? No elector has a particular personal interest; but each has a legal right, to be exercised at his own discretion, and it cannot be taken away from him. The exercise of this right directly and very materially affects the public; much more so than the exercise of the privileges of a trustee of this college. Consequences of the utmost magnitude may sometimes depend on the exercise of the right of suffrage by one or a few electors. Nobody was ever yet heard to contend, however, that on that account the public might take away the right or impair it. This notion appears to be borrowed from no better source than the repudiated doctrine of the three judges in the Aylesbury case.† That was an action against a returning officer for refusing the plaintiff's vote, in the election of a member of parliament.—Three of the judges of the king's bench held, that the action could not be maintained, because among other objections, "*it was not any matter of profit, either in presenti, or in futuro.*" It would not enrich the plaintiff, *in presenti*, nor would it, *in futuro*, go to his heirs, or answer to pay his debts. But lord Holt and the house of lords were of another opinion. The judgment of the three judges was reversed, and the doctrine they held, having been exploded for a century, seems now for the first time to be revived.

Individuals have a right to use their own property for purposes of benevolence, either towards the public, or towards other individuals. They have a right to exercise this benevolence in such lawful manner as they may choose; and when the government has induced and excited it, *by contracting to give perpetuity to the stipulated manner of exercising it*, to rescind this contract, and seize on the property, is not law, but violence. Whether the state will grant these franchises, and under what conditions it will grant them, it decides for itself.

* Phillips vs. Bury.—Green vs. Rutherforth, ubi supra.—Vide also 2 Black. 21.
† Ashby vs. White, 2 Lord Ray. 938.

But when once granted, the constitution holds them to be sacred, till forfeited for just cause.

That all property, of which the use may be beneficial to the public, belongs therefore to the public, is quite a new doctrine. It has no precedent, and is supported by no known principle. Dr. Wheelock might have answered his purposes, in this case, by executing a private deed of trust.—He might have conveyed his property to trustees, for precisely such uses as are described in this charter. Indeed it appears, that he had contemplated the establishing of his school in that manner, and had made his will, and devised the property to the same persons who were afterwards appointed trustees in the charter. Many literary and other charitable institutions are founded in that manner, and the trust is renewed, and conferred on other persons, from time to time, as occasion may require. In such a case, no lawyer would or could say that the legislature might divest the trustees, constituted by deed or will, seize upon the property, and give it to other persons, for other purposes. And does the granting of a charter, which is only done to perpetuate the trust in a more convenient manner make any difference? Does or can this change the nature of the charity, and turn it into a public political corporation?—Happily we are not without authority on this point. It has been considered and adjudged. Lord Hardwicke says, in so many words, "the charter of the crown cannot make a charity more or less public, but only more permanent than it would otherwise be.*

The granting of the corporation is but making the trust perpetual, and does not alter the nature of the charity. The very object sought in obtaining such charter, and in giving property to such a corporation, is to make and keep it private property, and to clothe it with all the security and inviolability of private property. The intent is, that there shall be a legal private ownership, and that the legal owners shall maintain and protect the property, for the benefit of those for whose use it was designed. Who ever endowed the public? Who ever appointed a legislature to administer his charity? Or who ever heard, before, that a gift to a *college*, or *hospital*, or an *asylum*, was, in reality, nothing but a gift to the state.

The state of Vermont is a principal donor to Dartmouth College. The lands given lie in that state. This appears in the special verdict. Is Vermont to be considered as having intended a gift to the state of New Hampshire in this case; as it has been said is to be the reasonable construction of all donations to the college? The legislature of New Hampshire affects to represent the *public*, and therefore claims a right to control all property destined to public use. What hinders Vermont from considering herself equally the representative of the *public*, and from resuming her grants, at her own pleasure? Her right to do so is less doubtful than the power of New Hampshire to pass the laws in question.

In University vs. Foy† the supreme court of North Carolina pronounced unconstitutional and void, a law repealing a grant to the University of North Carolina; although that university was originally erected and endowed by a statute of the state. That case was a

* 2 Atk. 87. Attorney General vs. Pearce. † 2 Haywood's Rep.

grant of *lands*, and the court decided that it could not be resumed. This is the grant of a power and capacity *to hold lands*. Where is the difference of the cases, upon principle?

In Terrett vs. Taylor* this court decided, that a legislative grant or confirmation of lands, for the purposes of moral and religious instruction, could no more be rescinded than other grants. The nature of the use was not holden to make any difference. A grant to a parish or church, for the purposes which have been mentioned, cannot be distinguished, in respect to the title it confers, from a grant to a college for the promotion of piety and learning. To the same purpose may be cited the case of Pawlett vs. Clark. The state of Vermont, by statute in 1794, granted to the respective towns in that state, certain glebe lands lying within those towns *for the sole use and support of religious worship*. In 1799, an act was passed to *repeal the act of* 1794; but this court declared, that the act of 1794, "so far as it granted the glebes to the towns, *could not afterwards be repealed by the legislature, so as to divest the rights of the towns under the grant.*"†

It will be for the other side to show, that the nature of the *use*, decides the question, whether the legislature has power to resume its grants. It will be for those, who maintain such a doctrine, to show the *principles and cases* upon which it rests. It will be for them also to fix the limits and boundaries of their doctrine, and to show, what are and what are not, such uses as to give the legislature this power of resumption and revocation. And to furnish an answer to the cases cited, it will be for them further to show, that a grant for the *use and support of religious worship*, stands on other ground than a grant for *the promotion of piety and learning*.

I hope enough has been said to show, that the trustees possessed vested liberties, privileges, and immunities, under this charter; and that such liberties, privileges and immunities, being once lawfully obtained and vested, are as inviolable as any vested rights of property whatever.—Rights to do certain acts, such, for instance, as the visitation and superintendence of a college and the appointment of its officers, may surely be *vested rights*, to all legal intents, as completely as the right to possess property. A late learned judge of this court has said, when I say that a *right* is vested in a citizen, I mean that he has the power to do *certain actions;* or to possess *certain things;* according to the law of the land.‡

If such be the true nature of the plaintiffs' interests under this charter, what are the articles in the New Hampshire bill of rights which these acts infringe?

They infringe the *second article;* which says, that the citizens of the state have a right to *hold and possess property*. The plaintiffs had a legal property *in* this charter; and they had acquired property *under* it. The acts deprive them of both. They impair and take away the charter; and they appropriate the property to new uses, against their consent. The plaintiffs cannot now *hold* the property acquired by themselves, and which this article says they have a right to hold.

* 9 Cranch 43. † 9 Cranch 292. ‡ 3 Dal. 394

They infringe the *twentieth article*. By that article it is declared, that in questions of property, *there is a right to trial*. The plaintiffs are divested, *without* trial or judgment.

They infringe the *twenty-third article*. It is therein declared, that *no retrospective laws shall be passed*. This article bears directly on the case. These acts must be deemed to be *retrospective*, within the settled construction of that term. What a retrospective *law* is, has been decided on the construction of this very article, in the circuit court for the first circuit. The learned judge of that circuit, says, "every statute which takes away, or impairs, vested rights, acquired under existing laws, must be deemed retrospective."* That all such laws are retrospective, was decided also in the case of Dash vs. Van Kleek† where a most learned judge quotes this article from the constitution of New Hampshire, with manifest approbation, as a plain and clear expression of those fundamental and unalterable principles of justice, which must lie at the foundation of every free and just system of laws. Can any man deny that the plaintiffs had *rights*, under the charter, which were legally *vested*, and that by these acts, those rights are *impaired*?

"It is a principle in the English law," says chief justice Kent, in the case last cited, "as ancient as the law itself, that a statute, even of its omnipotent parliament, is not to have a retrospective effect. *Nova constitutio futuris formam imponere debet, et non præteritis.*‡ The maxim in Bracton, was probably taken from the civil law, for we find in that system the same principle, that the lawgiver cannot alter his mind to the prejudice of a vested right. *Nemo potest mutare concilium suum in alterius injuriam.*§ This maxim of Papinian is general in its terms, but Dr. Taylor‖ applies it directly as a restriction upon the lawgiver, and a declaration in the code leaves no doubt as to the sense of the civil law. *Leges et constitutiones futuris certum est dare formam negotiis, non ad facta præterita revocari, nisi nominatim, et de præterito tempore, et adhuc pendentibus negotiis cautum sit.*¶ This passage, according to the best interpretation of the civilians, relates not merely to future suits, but to future, as contradistinguished from past contracts and vested rights.** It is, indeed, admitted that the prince may enact a retrospective law, provided it be done *expressly;* for the will of the prince under the despotism of the Roman Emperors was paramount to every obligation. Great latitude was anciently allowed to legislative expositions of statutes; for the separation of the judicial from the legislative power was not then distinctly known or prescribed. The prince was in the habit of interpreting his own laws for particular occasions. This was called the *Interlocutio Principis;* and this, according to Huber's definition, was, *quando principes inter partes loquuntur et jus dicunt.*†† No correct civilian, and especially no proud admirer of the ancient republic, (if any such then existed) could have reflected on this interference with private rights and pending suits without disgust and indignation; and we are rather surprised to find that under the violent

* 2 Gal. 103. Society vs. Wheeler.
‡ Bracton Lib. 4. fol. 228. 2nd Inst. 292.
‖ Elements of the Civil Law 168.
** Perezii Prælect. h. t.
† 7 Johnson's Rep. 477.
§ Dig. 50. 17. 75.
¶ Cod. 1. 14. 7.
†† Prælect Juris Civ. vol. 2. 545.

and irregular genius of the Roman government, the principle before us should have been acknowledged and obeyed to the extent in which we find it. The fact shows that it must be founded in the clearest justice. Our case is happily very different from that of the subjects of *Justinian*. With us, the power of the lawgiver is limited and defined; the judicial is regarded as a distinct, independent power: private rights have been better understood and more exalted in public estimation, as well as secured by provisions dictated by the spirit of freedom, and unknown to the civil law. Our constitutions do not admit the power assumed by the Roman prince, and the principle we are considering is now to be regarded as sacred."

These acts infringe also the *thirty-seventh article* of the constitution of New Hampshire; which says, that the powers of government shall be kept separate. By these acts, the legislature assumes to exercise a *judicial power*. It declares a *forfeiture*, and resumes franchises, once granted, without trial or hearing.

If the constitution be not altogether waste paper, it has restrained the power of the legislature, in these particulars. If it has any meaning, it is, that the legislature shall pass no act directly and manifestly impairing private property and private privileges. It shall not judge, by *act*. It shall not decide, by *act*. It shall not deprive, by *act*. But it shall leave all these things to be tried and adjudged, by the law of the land.

The *fifteenth article* has been referred to before. It declares that no one shall be "deprived of his property, immunities or privileges, but by the judgment of his peers or the law of the land." Notwithstanding the light in which the learned judges in New Hampshire viewed the rights of the plaintiffs under the charter, and which has been before adverted to, it is found to be admitted in their opinion, that those rights are *privileges* within the meaning of this *fifteenth* article of the bill of rights. Having quoted that article, they say: "that the right to manage the affairs of this college, is a privilege within the meaning of this clause of the bill of rights, is not to be doubted." In my humble opinion this surrenders the point. To resist the effect of this admission, however, the learned judges add —"But how a privilege can be protected from the operation of the law of the land by a clause in the constitution, declaring that it shall not be taken away, but by the law of the land, is not very easily understood."—This answer goes on the ground, that the acts in question *are laws of the land*, within the meaning of the constitution. If they be so, the argument drawn from this article is fully answered. If they be not so, it being admitted that the plaintiffs' rights are "*privileges*," within the meaning of the article, the argument is not answered, and the article is infringed by the acts. Are then these acts of the legislature, which affect only particular persons and their particular privileges, laws of the land? Let this question be answered by the text of Blackstone. "And first it (i. e. law) is a *rule:* not a transient sudden order from a superior to or concerning a particular person; but something permanent, uniform, and universal. Therefore a particular act of the legislature to confiscate the goods of Titius, or to attaint him of high treason, does not

enter into the idea of a municipal law: for the operation of this act is spent upon Titius only, and has no relation to the community in general; it is rather a sentence than a law."* Lord Coke is equally decisive and emphatic. Citing and commenting on the celebrated 29th chap. of *Magna Charta*, he says, "no man shall be disseized, &c. unless it be by the lawful judgment, that is, verdict of equals, or by the *law of the land*, that is, (to speak it once for all,) *by the due course and process of law*.† Have the plaintiffs lost their franchises by "due course and process of law?" On the contrary, are not these acts, "particular acts of the legislature, which have no relation to the community in general, and which are rather sentences than laws?"

By the law of the land, is most clearly intended, the general law; a law, which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Everything which may pass under the form of an enactment, is not therefore to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees, and forfeitures in all possible forms, would be the law of the land.

Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the legislature. There would be no general permanent law for courts to administer, or for men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees; not to declare the law or to administer the justice of the country. "Is that the law of the land," said Mr. Burke, "upon which, if a man go to Westminster Hall, and ask counsel by what title or tenure he holds his privilege or estate *according to the law of the land*, he should be told, that the law of the land is not yet known; that no decision or decree has been made in his case; that when a decree shall be passed, he will then know *what the law of the land is*? Will this be said to be the law of the land, by any lawyer who has a rag of a gown left upon his back, or a wig with one tie upon his head?"

That the power of electing and appointing the officers of this college, is not only a right of the trustees as a corporation, generally, and in the aggregate, but *that each individual trustee has also his own individual franchise in such right of election and appointment*, is according to the language of all the authorities. Lord Holt says, "it is agreeable to reason and the rules of law, that a franchise should be vested in the corporation aggregate, and yet the benefit of it to redound to the particular members, and to be enjoyed by them in their private capacity. Where the privilege of election is used by particular persons, *it is a particular right, vested in every particular man.*"‡

It is also to be considered, that the president and professors of this college have rights to be affected by these acts. Their interest

* 1 Black. Com. 44. † Coke 2 In. 46. ‡ 2 Lord Ray. 952.

is similar to that of *fellows* in the English colleges; because they derive their living, wholly or in part, from the founder's bounty. The president is one of the trustees, or corporators. The professors are not necessarily members of the corporation; but they are appointed by the trustees, are removable only by them, and have fixed salaries payable out of the general funds of the college.—Both president and professors have *freeholds* in their offices; subject only to be removed, by the trustees, as their legal visitors, for good cause. All the authorities speak of fellowships in colleges as *freeholds*, notwithstanding the fellows may be liable to be suspended or removed, for misbehavior, by their constituted visitors.

Nothing could have been less expected, in this age, than that there should have been an attempt, by acts of the legislature, to take away these college livings, the inadequate, but the only support of literary men, who have devoted their lives to the instruction of youth. The president and professors were appointed by the twelve trustees.—They were accountable to nobody else and could be removed by nobody else. They accepted their offices on this tenure. Yet the legislature has appointed other persons, with power to remove these officers, and to deprive them of their livings; and those other persons have exercised that power. No description of private property has been regarded as more sacred than college livings. They are the estates and freeholds of a most deserving class of men; of scholars, who have consented to forego the advantages of professional and public employments, and to devote themselves to science and literature, and the instruction of youth, in the quiet retreats of academic life.—Whether to dispossess and oust them; to deprive them of their office, and to turn them out of their livings; to do this not by the power of their legal visitors, or governors, but by acts of the legislature; and to do it without forfeiture, and without fault; whether all this be not in the highest degree an indefensible and arbitrary proceeding, is a question, of which there would seem to be but one side fit for a lawyer or a scholar to espouse.

Of all the attempts of James II. to overturn the law, and the rights of his subjects, none was esteemed more arbitrary or tyrannical, than his attack on *Magdalen College*, Oxford: And, yet, that attempt was nothing but to put out one president and put in another. The president of that college, according to the charter and statutes, is to be chosen by the fellows, who are the corporators. There being a vacancy, the king chose to take the appointment out of the hands of the fellows, the legal electors of a president, into his own hands. He therefore sent down his mandate *commanding* the fellows to admit, for president, a person of his nomination; and inasmuch as this was directly against the charter and constitution of the college, he was pleased to add a *non obstante* clause of sufficiently comprehensive import. The fellows were commanded to admit the person mentioned in the mandate, "*any statute, custom or constitution to the contrary notwithstanding, wherewith we are graciously pleased to dispense, in this behalf.*" The fellows refused obedience to this mandate, and Dr. Hough, a man of independence and character, was chosen president by the fellows, according to the charter and statutes. The king then assumed the power, in virtue of his prerogative, to send

down certain *commissioners* to turn him out; which was done accordingly; and Parker, a creature suited to the times, put in his place. And because the president, who was rightfully and legally elected, *would not deliver the keys, the doors were broken open.* "The nation as well as the University," says Bishop Burnet, [Hist. of his own times, Vol. 3. p. 119.] "looked on all these proceedings with just indignation. It was thought *an open piece of robbery and burglary, when men authorised by no legal commission, came and forcibly turned men out of their possession and freehold.*" Mr. Hume, although a man of different temper, and of other sentiments, in some respects, than Dr. Burnet, speaks of this arbitrary attempt of prerogative, in terms not less decisive. "The president, and all the fellows," says he, "*except two, who complied*, were expelled the college; and Parker was put in possession of the office. This act of violence of all those which were committed during the reign of James, is perhaps the most illegal and arbitrary. When the dispensing power was the most strenuously insisted on by court lawyers, it had still been allowed, that the statutes which regard *private property*, could not legally be infringed by that prerogative. Yet, in this instance, it appeared that even these were not now secure from invasion. The privileges of a college are attacked; men are illegally dispossessed of their property for adhering to their duty, to their oaths, and to their religion."

This measure king James lived to repent, after repentance was too late. When the charter of London was restored and other measures of violence retracted, to avert the impending revolution, the expelled president and fellows of Magdalen College were per mitted to resume their rights. It is evident that this was regarded as an arbitrary interference with *private property*. Yet private property was no otherwise attacked, than as a person was appointed to administer and enjoy the revenues of a college, in a manner and by persons *not authorised by the constitution of the college*. A majority of the members of the corporation would not comply with the king's wishes. A minority would. The object was, therefore, to make this minority a majority. To this end the king's commissioners were directed to interfere in the case, and they united with the *two complying fellows*, and expelled the rest; and thus effected a change in the government of the college. The language in which Mr. Hume, and all other writers, speak of this abortive attempt of oppression, shows that colleges were esteemed to be, as they truly are private corporations, and the property and privileges which belong to them, *private* property and *private* privileges. Court lawyers were found to justify the king in dispensing with the laws; that is, in assuming and exercising a legislative authority. But no lawyer, not even a court lawyer, in the reign of king James the second, as far as appears, was found to say that even by this high authority, he could infringe the franchises of the fellows of a college and take away their livings. Mr. Hume gives the reason; it is that such franchises were regarded, in a most emphatic sense, *as private property.**

If it could be made to appear, that the trustees and the president and professors held their offices and franchises during the pleasure

* Vide a full account of this case in state trials, 4 Edn. 4 Vol. page 262.

of the legislature, and that the property holden belonged to the state, then indeed the legislature have done no more than they had a right to do. But this is not so. The charter is a charter of *privileges* and *immunities;* and these are holden by the trustees expressly *against* the state forever.

It is admitted, that the state, by its courts of law, can enforce the will of the donor, and compel a faithful execution of the trust. The plaintiffs claim no exemption from legal responsibility. They hold themselves at all times answerable to the law of the land, for their conduct in the trust committed to them. They ask only to hold the property of which they are owners, and the franchises, which belong to them, until they shall be found by due course and process of law, to have forfeited them.

It can make no difference, whether the legislature exercise the power it has assumed, by removing the trustees and the president and professors, directly and by name, or by appointing others to expel them. The principle is the same, and in point of fact, the result has been the same. If the entire franchise cannot be taken away, neither can it be essentially impaired. If the trustees are legal owners of the property, they are *sole* owners. If they are visitors, they are *sole* visitors. No one will be found to say, that if the legislature may do what it has done, it may not do anything and everything, which it may choose to do, relative to the property of the corporation, and the privileges of its members and officers.

If the view which has been taken of this question be at all correct, this was an eleemosynary corporation; a private charity. The property was private property. The trustees were visitors, and their right to hold the charter, administer the funds, and visit and govern the college was a *franchise* and *privilege*, solemnly granted to them. The use being public, in no way diminishes their legal estate in the property, or their title to the franchise. There is no principle, nor any case, which declares that a gift to such a corporation, is a gift to the public. The acts in question violate property. They take away privileges, immunities, and franchises. They deny to the trustees the protection of the law; and they are retrospective in their operation. In all which respects they are against the constitution of New Hampshire.

The plaintiffs contend, in the second place, that the acts in question are repugnant to the 10th section of the 1st article of the constitution of the United States. The material words of that section are; "no state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

The object of these most important provisions in the national constitution has often been discussed, both here and elsewhere. It is exhibited with great clearness and force by one of the distinguished persons who framed that instrument. "Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former, are expressly prohibited by the declarations prefixed to some of the state constitutions, and all of them are prohibited by the spirit and scope of

these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers, ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights; and I am much deceived, if they have not, in so doing, as faithfully consulted the genuine sentiments, as the undoubted interests of their constituents. The sober people of America, are weary of the fluctuating policy which has directed the public councils. They have seen with regret, and with indignation, that sudden changes, and legislative interferences in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators; and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the link of a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding."*

It has already been decided in this court, that a *grant* is a contract, within the meaning of this provision; and that a grant by a state, is also a contract, as much as the grant of an individual. In Fletcher vs. Peck† this court says, " a contract is a compact between two or more parties, and is either executory or executed. An executory contract is one in which a party binds himself to do, or not to do, a particular thing; such was the law under which the conveyance was made by the government. A contract executed is one in which the object of contract is performed; and this, says Blackstone differs in nothing from a grant. The contract between Georgia and the purchasers was executed by the grant. A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right. If under a fair construction of the constitution, grants are comprehended under the term contracts, is a grant from the state excluded from the operation of the provision? Is the clause to be considered as inhibiting the state from impairing the obligation of contracts between two individuals, but as excluding from that inhibition contracts made with itself? The words themselves contain no such distinction. They are general, and are applicable to contracts of every description. If contracts made with the state are to be exempted from their operation, the exception must arise from the character of the contracting party, not from the words which are employed. Whatever respect might have been felt for the state sovereignties, it is not to be disguised, that the framers of the constitution viewed, with some apprehension, the violent acts which might grow out of the feelings of the moment; and that the people of the United States in adopting that instrument, have manifested a determination to shield themselves, and their property, from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the states, are obviously founded in this sentiment; and the constitution of the United States contains what may be deemed a bill of rights, for the people of each state "

* 44th No. of the Fed. by Mr. Madison. † 6 Cranch 87

It has also been decided, that a grant by a state before the revolution, is as much to be protected as a grant since.* But the case of Terrett vs. Taylor, before cited, is of all others most pertinent to the present argument. Indeed the judgment of the court in that case seems to leave little to be argued or decided in this. "A private corporation," say the court, "created by the legislature, may lose its franchises by a *misuser* or a *nonuser* of them; and they may be resumed by the government under a judicial judgment upon a *quo warranto* to ascertain and enforce the forfeiture. This is the common law of the land, and is a tacit condition annexed to the creation of every such corporation. Upon a change of government, too, it may be admitted that such exclusive privileges attached to a private corporation as are inconsistent with the new government, may be abolished. In respect, also, to *public* corporations which exist only for public purposes, such as counties, towns, cities, &c. the legislature may, under proper limitations, have a right to change, modify, enlarge or restrain them, securing, however, the property for the uses of those for whom and at whose expense it was originally purchased. But that the legislature can repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the state, or dispose of the same to such purposes as they please, without the consent or default of the corporators, we are not prepared to admit; and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and letter of the constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine."

This court, then, does not admit the doctrine, that a legislature can repeal statutes creating private corporations. If it cannot repeal them altogether, of course it cannot repeal any part of them, or impair them, or essentially alter them without the consent of the corporators. If, therefore, it has been shown that this college is to be regarded as a private charity, this case is embraced within the very terms of that decision. A grant of coporate powers and privileges is as much a *contract* as a grant of land. What proves all charters of this sort to be *contracts*, is, that they must be accepted to give them force and effect. If they are not accepted they are void. And in the case of an existing corporation, if a new charter is given it, it may even accept part and reject the rest. In *Rex* vs. vice chancellor of Cambridge,† lord Mansfield says, "there is a vast deal of difference between a new charter granted to a new corporation (who must take it as it is given;) and a new charter given to a *corporation* already in being, and acting either under a former charter, or under prescriptive usage. The *latter*, a corporation already existing, are *not* obliged to accept the new charter *in toto*, and to receive either all or none of it: they may act *partly* under it, and *partly* under their old charter or prescription. The validity of these new charters must turn upon the *acceptance* of them." In the same case Mr. Justice Wilmot says, "It is the *concurrence* and

* New Jersey vs. Wilson. 7 Cranch 164. † 3 Burr. 1656.

acceptance of the university that gives the *force* to the charter of the crown." In the King vs. Passmore,* lord Kenyon observes: "some things are clear; when a corporation exists capable of discharging its functions, the crown cannot obtrude another charter upon them; they may either accept or reject it."†

In all cases relative to charters, the *acceptance* of them is uniformly alleged in the pleadings. This shows the general understanding of the law, that they are grants, or contracts; and that *parties* are necessary to give them force and validity. In King vs. Dr. Askew,‡ it is said; "The crown *cannot oblige* a man to be a coporator, without his consent: he shall not be subject to the inconveniences of it, without *accepting* it and *assenting* to it." These terms, "*acceptance*" and "*assent*," are the very language of contract. In Ellis vs. Marshall§ it was expressly adjudged that the naming of the defendant among others, in an act of incorporation, did not of itself make him a corporator; and that his *assent* was necessary to that end. The court speak of the act of incorporation as a *grant*, and observe; "that a man may refuse a *grant*, whether from the government or an individual, seems to be a principle too clear, to require the support of authorities." But Justice Buller, in King vs. Passmore, furnishes, if possible, a still more direct and explicit authority. Speaking of a corporation for government, he says: "I do not know how to reason on this point better than in the manner urged by one of the relator's counsel; who considered the grant of incorporation to be *a compact* between the crown and a certain number of the subjects, the latter of whom undertake, in consideration of the privileges which are bestowed, to exert themselves for the good government of the place." This language applies, with peculiar propriety and force to the case before the court. It was in consequence of the "privileges bestowed," that Dr. Wheelock and his associates undertook to exert themselves for the instruction and education of youth in this college; and it was on the same consideration that the founder endowed it with his property.

And because charters of incorporation are of the nature of contracts, they cannot be altered or varied but by consent of the original *parties*. If a charter be granted by the king, it may be altered by a new charter granted by the king, and accepted by the corporators. But if the first charter be granted by parliament, the consent of parliament must be obtained to any alteration. In King vs. Miller,‖ lord Kenyon says; "Where a corporation takes its rise from the king's charter, the king by granting, and the corporation by accepting another charter, may alter it, because it is done with the consent of all the parties who are competent to consent to the alteration."¶

There are, in this case, all the essential constituent parts of a contract. There is something to be contracted about, there are parties, and there are plain terms in which the agreement of the parties, on the subject of the contract, is expressed. There are mutual considerations and inducements. The charter recites, that the founder, on his part, has agreed to establish his seminary, in

* 3 Term Rep. 240. † Vide also 1 Kyd on Cor. 65. ‡ 4 Burr, 2200. § 2 Mass. Rep. 269.
‖ 6 Term Rep. 277. ¶ Vide also 2 Brown, Ch. Rep. 662. Ex parte, Bolton school.

New Hampshire, and to enlarge it, beyond its original design, among other things, for the benefit of that province: and thereupon a charter is given to him, and his associates designated by himself, promising and assuring to them under the plighted faith of the state, the right of governing the college, and administering its concerns in the manner provided in the charter. There is a complete and perfect grant to them of all the power of superintendence, visitation, and government. Is not this a contract? If lands or money had been granted to him and his associates, for the same purposes, such grant could not be rescinded. And is there any difference in legal contemplation, between a grant of corporate franchises, and a grant of tangible property? No such difference is recognised in any decided case, nor does it exist in the common apprehension of mankind.

It is therefore contended, that this case falls within the true meaning of this provision of the constitution, as expounded in the decisions of this court; that the charter of 1769, is a contract, a stipulation or agreement; mutual in its considerations, express and formal in its terms, and of a most binding and solemn nature. That the acts in question *impair* this contract, has already been sufficiently shown. They repeal and abrogate its most essential parts.

A single observation may not be improper on the opinion of the court of New Hampshire, which has been published. The learned judges, who delivered that opinion, have viewed this question in a very different light, from that in which the plaintiffs have endeavoured to exhibit it. After some general remarks, they assume that this college is a public corporation; and on this basis their judgment rests. Whether all colleges are not regarded as private, and eleemosynary corporations, by all law writers, and all judicial decisions; whether this college was not founded by Dr. Wheelock; whether the charter was not granted at his request, the better to execute a trust, which he had already created; whether he and his associates did not become visitors, by the charter; and whether Dartmouth College be not, therefore, in the strictest sense, a private charity, are questions which the learned judges do not appear to have discussed.

It is admitted in that opinion, that if it be a private corporation, its rights stand on the same ground as those of an individual. The great question, therefore, to be decided, is, to which class of corporations do colleges thus founded belong? And the plaintiffs have endeavoured to satisfy the court, that according to the well settled principles, and uniform decisions of law, they are private eleemosynary corporations.

Much has heretofore been said on the *necessity* of admitting such a power in the legislature as has been assumed in this case. Many cases of possible evil have been imagined, which might otherwise be without remedy. Abuses, it is contended, might arise in the management of such institutions, which the ordinary courts of law would be unable to correct. But this is only another instance of that habit of supposing extreme cases, and then of reasoning from them, which is the constant refuge of those who are obliged to defend a cause, which, upon its merits, is indefensible. It would be sufficient to say, in answer, that it is not pretended, that there was here any such case of necessity. But a still more satisfactory answer, is,

that the apprehension of danger is groundless, and therefore the whole argument fails. Experience has not taught us that there is danger of great evils or of great inconvenience from this source. Hitherto, neither in our own country nor elsewhere, have such cases of necessity occurred. The judicial establishments of the state are presumed to be competent to prevent abuses and violations of trust, in cases of this kind, as well as in all others. If they be not, they are imperfect, and their amendment would be a most proper subject for legislative wisdom. Under the government and protection of the general laws of the land, these institutions have always been found safe, as well as useful. They go on, with the progress of society, accommodating themselves easily, without sudden change or violence, to the alterations which take place in its condition; and in the knowledge, the habits, and pursuits of men. The English colleges were founded in Catholic ages. Their religion was reformed with the general reformation of the nation; and they are suited perfectly well to the purpose of educating the protestant youth of modern times. Dartmouth college was established under a charter granted by the provincial government; but a better constitution for a college, or one more adapted to the condition of things under the present government, in all material respects, could not now be framed. Nothing in it was found to need alteration at the revolution. The wise men of that day saw in it one of the best hopes of future times, and commended it, as it was, with parental care, to the protection and guardianship of the government of the state. A charter of more liberal sentiments, of wiser provisions, drawn with more care, or in a better spirit, could not be expected at any time or from any source. The college needed no change in its organization or government. That which it did need was the kindness, the patronage, the bounty of the legislature; not a mock elevation to the character of a university, without the solid benefit of a shilling's donation to sustain the character; not the swelling and empty authority of establishing *institutes* and *other colleges*. This unsubstantial pageantry would seem to have been in derision of the scanty endowment and limited means of an unobtrusive but useful and growing seminary. Least of all was there a necessity, or pretence of necessity, to infringe its legal rights, violate its franchises and privileges, and pour upon it these overwhelming streams of litigation.

But this argument from *necessity*, would equally apply in all other cases.—If it be well founded, it would prove, that whenever any inconvenience or evil should be experienced from the restrictions imposed on the legislature by the constitution, these restrictions ought to be disregarded. It is enough to say, that the people have thought otherwise.—They have, most wisely, chosen to take the risk, of occasional inconvenience from the want of power, in order that there might be a settled limit to its exercise, and a permanent security against its abuse. They have imposed prohibitions and restraints; and they have not rendered these altogether vain and nugatory by conferring the power of dispensation. If inconvenience should arise, which the legislature cannot remedy under the power conferred upon it, it is not answerable for such inconvenience. That which it cannot do, within the limits prescribed to it, it cannot do at all. No

legislature in this country is able, and may the time never come when it shall be able, to apply to itself the memorable expression of a Roman pontiff; "*Licet hoc* DE JURE *non possumus, volumus tamen* DE PLENITUDINE POTESTATIS."

The case before the court is not of ordinary importance, nor of every day occurrence. It affects not this college only, but every college, and all the literary institutions of the country. They have flourished, hitherto, and have become in a high degree respectable and useful to the community. They have all a common principle of existence, the inviolability of their charters. It will be a dangerous, a most dangerous experiment, to hold these institutions subject to the rise and fall of popular parties, and the fluctuations of political opinions. If the franchise may be at any time taken away, or impaired, the property also may be taken away, or its use perverted. Benefactors will have no certainty of effecting the object of their bounty; and learned men will be deterred from devoting themselves to the service of such institutions, from the precarious title of their offices. Colleges and halls will be deserted by all better spirits, and become a theatre for the contention of politics. Party and faction will be cherished in the places consecrated to piety and learning. These consequences are neither remote nor possible only. They are certain and immediate.

When the court in North Carolina declared the law of the state, which repealed a grant to its university, unconstitutional and void, the legislature had the candor and the wisdom to repeal the law. This example, so honorable to the state which exhibited it, is most fit to be followed on this occasion. And there is good reason to hope, that a state, which has hitherto been so much distinguished for temperate councils, cautious legislation, and regard to law, will not fail to adopt a course, which will accord with her highest and best interest, and in no small degree elevate her reputation.

It was for many and obvious reasons most anxiously desired, that the question of the power of the legislature over this charter should have been finally decided in the state court. An earnest hope was entertained that the judges of that court might have viewed the case in the light favorable to the rights of the trustees. That hope has failed. It is here, that those rights are now to be maintained, or they are prostrated forever. *Omnia alia perfugia bonorum, subsidia, consilia, auxilia, jura ceciderunt. Quem enim alium appellem? quem obtester? quem implorem? Nisi hoc loco, nisi apud vos, nisi per vos, judices, salutem nostram, quae spe exigua extremaque pendet, tenuerimus; nihil est præterea quo confugere possimus.*

ARGUMENT

IN THE IMPEACHMENT OF JAMES PRESCOTT, BEFORE THE SENATE OF MASSACHUSETTS.—1821.

A Petition having been presented to the House of Representatives of the Commonwealth of Massachusetts, praying an inquiry into the official conduct of James Prescott, Esquire, Judge of Probate of Wills, &c. for the County of Middlesex, and charging him with misconduct and maladministration in office; and having been referred to a committee, who reported a statement of facts, together with resolutions, setting forth that the said Prescott ought to be impeached therefor, at the bar of the Senate of the Commonwealth—on the 2d day of February, 1821, an order was passed accordingly, and the Senate demanded to take measures for his impeachment and appearance to answer thereto. A committee was thereupon appointed to prepare and report articles of impeachment. And John Glen King, Levi Lincoln, William Baylies, Warren Dutton, Samuel P. P. Fay, Lemuel Shaw and Sherman Leland, Esquires, were appointed Managers. Fifteen Articles of Impeachment were exhibited and read.

The Articles substantially charged him with holding Probate Courts for transacting business at other times than those authorised by law, demanding and taking illegal fees, and acting as counsel and receiving fees as such in cases pending, in his own Court, before him, as Judge.

After receiving the Respondent's answer to the Articles of Impeachment, and hearing the evidence in support of and against the same; Messrs. Leland, Shaw and Dutton argued the case in behalf of the Managers. Mr. Hoar then opened the argument, on the part of the Respondent, Mr. Blake followed, and was succeeded by Mr. Webster, who spoke as follows:—

Mr. President,—I agree with the Hon. Managers, in the importance which they have attributed to this proceeding. They have, I think, not at all overrated that importance, nor ascribed to the occasion, a solemnity which does not belong to it. Perhaps, however, I differ from them, in regard to the causes which give interest and importance to this trial, and to the parties likely to be most lastingly and deeply affected by its progress and result. The Respondent has as deep a stake, no doubt, in this trial, as he can well have in anything which does not affect life. Regard for reputation, love of honorable character, affection for those who must suffer with him, if he suffers, and who will feel your sentence of conviction, if you should pronounce one, fall on their own heads, as it falls on his, cannot but excite, in his breast, an anxiety, which nothing could well increase, and nothing but a consciousness of upright intention could enable him to endure. Yet, sir, a few years will carry him far beyond the reach of the consequences of this trial. Those same years will bear away, also, in their rapid flight, those who prosecute and those

who judge him. But the community remains. The Commonwealth, we trust, will be perpetual. She is yet in her youth, as a free and independent State, and, by analogy to the life of individuals, may be said to be in that period of her existence, when principles of action are adopted, and character is formed. The Hon. Respondent will not be the principal sufferer, if he should here fall a victim to charges of undefined and undefinable offences, to loose notions of constitutional law, or novel rules of evidence. By the necessary retribution of things, the evil of such a course would fall most heavily on the State which should pursue it, by shaking its character for justice, and impairing its principles of constitutional liberty.—This, sir, is the first interesting and important impeachment which has arisen under the constitution of the Commonwealth.—The decision now to be made cannot but affect subsequent cases. Governments necessarily are more or less regardful of precedents, on interesting public trials, and as, on the present occasion, all who act any part here have naturally considered what has been done, and what rules and principles have governed, in similar cases, in other communities, so those who shall come after us will look back to this trial. And I most devoutly hope they may be able to regard it, as a safe and useful example, fit to instruct and guide them in their own duty; an example full of wisdom, and of moderation; an example of cautious and temperate justice; an example of law and principle successfully opposed to temporary excitement; an example, indicating in all those who bear a leading part in the proceedings, a spirit, fitted for a judicial trial, and proper for men who act with an enlightened and firm regard to the permanent interests of public constitutional liberty. To preserve the Respondent in the office which he fills, may be an object of little interest to the public; and to deprive him of that office may be of as little. But on what principles, he is either to be preserved or deprived, is an inquiry, in the highest degree important, and in which the public has a deep and lasting interest.

The provision, which the constitutions of this and other states have made for trying impeachments before the Senate, is obviously adopted from an analogy to the English constitution. It was perceived, however, and could hardly fail to be perceived, that the resemblance was not strong, between the tribunals, clothed with the power of trying impeachments, in this country, and the English House of Lords. This last is not only a branch of the legislature, but a standing judicature. It has jurisdiction to revise the judgments of all other courts. It is accustomed to the daily exercise of judicial power, and has acquired the habit and character which such exercise confers. There is a presumption, therefore, that it will try impeachments, as it tries other causes, and that the common rules of evidence, and the forms of proceedings, so essential to the rights of the accused, which prevail in other cases, will prevail also in cases of impeachment. In the construction of our American governments, it is obvious, that although the power of judging on impeachments could probably be nowhere so well deposited, as with the senate, yet it could not but be foreseen, that this high act of judicature was to be trusted to the hands of those who did not ordinarily perform judicial functions; but who occasionally only, and on such

occasions, moreover, as were generally likely to be attended with some excitement, took upon themselves the duty of judges. It must, nevertheless, be confessed, that few evils have been, as yet, found to result from this arrangement. In all the states, in the aggregate, although there have been several impeachments, there have been fewer convictions, and fewer still, in which there is just reason to suppose injustice has taken place. From the experience of the past, I trust we form favorable anticipations of the future, and that the judgment which this court shall now pronounce, and the rules and principles which shall guide that judgment, will be such as shall secure to the community a rigorous and unrelenting censorship over maladministration in office, and to individuals entire protection against prejudice, excitement, and injustice.

The Respondent is impeached for various instances of alleged misconduct, in his office, as Judge of Probate, for the county of Middlesex. In order that we may understand the duties which he is charged with violating, it is necessary to inquire into the origin and nature of these duties, and to examine the legal history of the Commonwealth, in regard to the officers, who from time to time have executed and performed these duties. It is now two centuries since our ancestors established a colony here. They brought with them, of course, the general notions with regard to property, the administration of justice, and the peculiar powers and duties of different tribunals, which they had formed in the country which they left; and these notions, and general ideas, they adopted in practice, with such modifications as circumstances rendered necessary. In England, they had been accustomed to see the jurisdiction over wills and administrations exercised in the spiritual courts, by the bishops or their ordinaries. Here, there were no such courts. Still it was a necessary jurisdiction, to be exercised by some tribunal, and in the early history of the colony, it was exercised by the same magistrates, or some of them, on whom the other portions of judicial power were conferred. Wills were proved, and administrations granted, by the county magistrates, essentially in the same manner as in England by the bishops, or their delegates. It seems that any two magistrates, with the clerk of the county court, might prove a will, and cause it to be recorded in the county court; and might grant administrations, in like manner. (*Ancient Charters*, 204.)

At length, by the act of 1685, (*An. Ch.* 205) it was expressly declared, that the county court, in cases of probate of wills, and the granting of administrations, should have the same power and authority *as the ordinary in England.*

By the provincial charter of 1692, all power and jurisdiction, in the probate of wills and granting administration, was conferred on the governor and council. The governor then became supreme ordinary, and by the provision of the statutes they were to exercise the same power and authority as were exercised by the ordinary in England.

At this time, no statute had regulated fees in the probate office; and yet it is not probable that business was done there, at that time, without fees, any more than at later periods. We must look therefore for some other authority, than a statute permission, for the

establishment and regulation of fees, in this office. And as the governor and council possessed the general power of the courts in England, it is material to inquire into the authority and practice of those courts in this particular. There can be no doubt, that in the English courts, fees, in cases of probate and administration, were, from early times, in most cases regulated by custom, and the authority and direction of the courts themselves, without statute provisions. A table of fees, established in 1597, in the time of archbishop Whitgift, may be seen in *Burn's Ecclesiastical Law*, vol. 2. p. 266.

This table sets forth a long list of charges and fees of office accruing in the administration of estates, such as for "administration," which probably means decreeing administration, "commission," which is the letter of administration, "interlocutory decree," "examination of account," "respite of inventory," "caveat," "citation," "quietus," &c. &c. &c. At this time there was no statute which established the fees of office, in cases of administration, except one single provision in the St. 21, Hen. VIII, cap. 5, which enacted, that for granting administration on goods under forty pounds, the judge should receive no more than two shillings and sixpence. It appears from the preamble of that statute, that no previous law was existing, on the subject, and the grievance recited, is, that the bishops and their ordinaries demanded and received greater fees, for the probation of testaments, and other things thereunto belonging, than had been aforetime usual and accustomed. The preamble recites also, that an act of Henry V. had ordained, that no ordinary should take, for the probation of testaments, or other things to the same belonging, any more than was accustomed and used in the time of king Edward the third, *which act did endure but to the next parliament, by reason that the said ordinaries did then promise to reform and amend their exactions:* but inasmuch as the evil was still continued and aggravated, the act proceeded to limit and fix fees of office, for the probate of wills, and for other services respecting testate estates, and contains the single provision above mentioned, and no more, respecting administrations on intestate estates.

It is entirely clear and certain, that the fees of bishops and their ordinaries did not *originate* in the grant or provision of any act of parliament. Such acts were passed only to restrain and limit the amount, and to prevent exaction and extortion. The right to demand and receive fees rested on the general principle of a right to compensation for services rendered; and in the absence of statute limitations, the amount was ascertained by the practice and usage of the courts, being reasonable and proper. Hence it happened, in England, that different fees were paid, and probably still are, in the different dioceses, according to the usage of different courts, and the time when their tables of fees were respectively established. "In the several dioceses there are tables of fees, different, as it seemeth, in the several charges, in proportion to the difference of times wherein they have been established." (2. *Burn*, 269.) This is precisely what has happened, and what, whether allowed to prove it or not, every member of this court knows, now actually exists, in relation to the different counties of this Commonwealth.

It is most material to the Respondent's case to understand clearly, on what ground it is, that, as Judge of Probate, he had a right to receive fees for services performed in his office. There is a difference of opinion, in matter of law, in this respect, between the Managers and ourselves, wide enough, in my judgment, to extend over the whole case. If the House of Representatives be right, in the legal doctrine which their Managers have advanced here, I agree at once the case is against the Respondent, unless, indeed, an indulgence may be allowed to his infirmity, in not understanding the law, as it is now asserted. I will proceed to state the question, now at issue between the Managers and us, as clearly as I may be able. The Managers contend that all fees of office, in such offices as the Respondent's, arise only from the express *grant* of the legislature; and that none can be claimed, where such grant is not shown. We, on the other hand, humbly submit, that the right, in such offices, to receive fees, is the general right to receive reasonable compensation for services rendered, and labor performed; and is no otherwise affected by statute, than as the *amount* of fees, is, or may be, *limited* by statute.

It is certain, that judges of probate, in this state, are required to perform many acts, (such, for instance, as granting guardianship to persons *non compotes mentis*) for which no fees are specifically established by the statute. One of the learned Managers has expressly advanced the proposition, that for such services the judge is entitled to receive no fees whatever. He contends, that the law presumes him to be adequately paid, on a sort of average, for all services by him performed, by the fees specially provided for some. On the contrary, we, very humbly, insist, that in all such cases the judge has a right to receive a just and reasonable fee of office for the service performed; the amount to be settled, on proper principles, and, as well as in any way, by analogy to similar services, for which the amount of fees is fixed by statute. The statute, for example, establishes the fees for a grant of guardianship over minors. It establishes none, for guardianship over *persons non compotes mentis*. The precise difference between the learned Managers and us, is, that they contend, that, in the last case, the judge is entitled to receive no fee at all; while we think, that he has a right to receive, in such case, a reasonable fee; and that what is resonable may fairly be determined by reference to what the law allows him in the case of guardianship over minors.

I rejoice, sir, in behalf of my client, that we have here a plain, intelligible question of law, to be discussed and decided. This is a question, in which neither prerogative nor discretion has aught to do. It is not to be decided, by reasons of state, or those political considerations, which we have heard so often, but so indefinitely, and, in my judgment, so alarmingly, referred to, and relied on, in the opening speeches of more than one of the learned Managers. It may possibly happen, sir, to the learned Managers, to share the fortunes of the gods in Homer's battles. While they keep themselves in the high atmosphere of prerogative, and political discretion, and assail the Respondent from the clouds, the advantage, in the controversy, may remain entirely with them. When they descend, however, to

an equal field of mortal combat, and consent to contend with mortal weapons—*cominus ense*—it is probable they may sometimes get, as well as give, a wound. On the present question, we meet the learned Managers on equal terms, and fair ground, and we are willing that our client's fate should abide the result. The Managers have advanced a plain and intelligible proposition, as being the law of the land. If they make it out, they show a good case against the Respondent; if they fail so to do, then their case, so far as it rests on this proposition, fails also. Let, then, the proposition be examined.

The proposition is, as before stated, that for services, which the law requires judges of probate to perform, but for which there is no particular fee established or provided by statute, they can receive no fee whatever.

In the first place, let it be remarked, that, of the various duties and services, required of judges of probate, some grow out of the very nature of their office, and are incidental to it, or arise by common law; others were imposed by statutes passed before the establishment of any fee bill whatever, and others, again, by statutes passed since. The statute, commonly called the fee bill, was passed for the regulation of fees in other courts, and other offices, as well as of the judges and registers of probate. It imposes no duty whatever on any officer. It treats only of existing duties, and of those no farther than to limit fees. It declares, that, "The fees of the several persons hereafter mentioned, *for the services respectively annexed to their names*, shall be as follows," &c. The statute then proceeds to enumerate, among other things, certain services of the judges of probate; but it is acknowledged that it does not enumerate or set forth *all* the services, which the law calls on him to perform.

In our opinion, sir, this is simply a *restraining* statute. It fixes the amount of fees, *in the cases mentioned*, leaving everything else as it stood before. I have already stated, that, in England, fees, in the ecclesiastical courts, for probate of wills, and granting administrations, were of earlier date than any statute respecting them, and their amount ascertained, by usage, and the authority of the courts themselves. "The rule is," says Dr. Burn, "the known and established custom of every place, being reasonable." (4. *Burn's Eccles. Law*, 267.)

And if the *reasonableness* of the fee be disputed, it may be tried by jury, whether the fee be reasonable. (1. *Salkeld*, 333.) If this be so, then clearly there exists a right to *some* fee, independent of a particular statute; for if there be no right to *any fee at all*, why refer to a jury to decide *what* fee would be reasonable? But the law is still more express on this point.—"Fees are certain perquisites allowed to officers in the administration of justice, *as a recompense for their labor and trouble;* ascertained, either by acts of parliament, or by ancient *usage*, which gives them an equal sanction with an act of parliament." All such fees as have been allowed by courts of justice to their officers, as a recompense for their labor and attendance, are established fees; and the parties *cannot be deprived* of them without an act of parliament." (*Coke, Lit.* 368. *Prec. Chan.* 551 *Jacob's Law Dict.*—"FEES.")

I may add, that fees are recoverable, in an action of *assumpsit*, as for work and labor performed. The doctrine contended for on the other side is contradicted, in so many words, by a well settled rule; viz. that if an office be erected for the public good, though no fee is annexed to it, it is a good office; and the party, for the labor and pains which he takes in executing it, may maintain a *quantum meruit*, if not as a *fee* yet as a compensation, for his *trouble*. (*Moore*, 808. *Jac.* "FEES." (A. E.) *Hard.* 355. *Salk.* 333.)

The universal practice, sir, has corresponded with these rules of law. Almost every officer in the Commonwealth, whose compensation consists in fees of office, renders services not enumerated in the fee bill, and is paid for those services; and this, through no indulgence, or abuse, but with great propriety and justice. Allow me to mention one instance, which may be taken as a sample for many. Some thousands of dollars are paid, every year, to the clerks of the several Courts of Common Pleas, in this State, for certified copies of papers and records remaining in their offices. The fee bill neither authorises the taking of any such fee, nor limits its amount, nor mentions it, in any way. There are other instances, equally clear and strong, and they show us that all the courts of justice, and all the officers concerned in its administration, have understood the law, as the Respondent has understood it; and that the *notion* of the learned Managers derives as little support from practice, as it does from reason or authority. The learned Managers have produced no one opinion of any writer, no decision of any court, and, as I think, no shadow of reason, to sustain themselves in the extraordinary ground which they have taken; ground, I admit, essential to be maintained by them, but which the Respondent could devoutly wish they had taken somewhat more of pains to examine and explore before, on the strength of it, they had brought him to this bar. I submit it, sir, to the judgment of this court, and to the judgment of every judge and every lawyer in the land, whether the law be not, that officers, paid by fees, have a right to such fees, for services rendered, on the general principle of compensation for work and labor performed; the amount to be ascertained by the statute, in cases in which the statute has made a regulation; and, in other cases, by analogy to the services, which are especially provided for, and by a consideration of what is just and reasonable in the case. With all my respect, sir, for the learned Managers, it would be mere affectation, if I were to express myself with any diffidence on this part of the case, or should leave the topic with the avowal of any other feeling than surprise, that a judge of the land should be impeached and prosecuted upon the foundation of such opinions as have in this particular been advanced.

Before I proceed further, sir, I wish to take notice of a point, perhaps not entirely essential to the case. The Respondent, in his answer, has stated, that the jurisdiction of judges of probate consists of two parts, commonly called the amicable or voluntary and the contentious jurisdiction. One of the learned Managers has said, that this distinction can by no means be allowed, and has proceeded to state, if I rightly understood him, that the *voluntary* juris-

diction of the English ecclesiastical courts has not, in any part of it, devolved on, and been granted to, the judges of probate here. As it is not perhaps material for the present discussion, to ascertain precisely what is the true distinction between the *voluntary* and the *contentious* jurisdiction of the ecclesiastical courts, as understood in England, I shall content myself with reading a single authority on the subject. Dr. Burn (vol. 1, p. 292) says;—"*Voluntary* jurisdiction is exercised in matters which require no judicial proceeding, as in granting probate of wills, letters of administration, sequestration of vacant benefices, institution, and such like; *contentious* jurisdiction is, where there is an action or judicial process, and consisteth in the hearing and determining of causes between party and party."

It can be now at once seen, sir, whether any part of the jurisdiction exercised by judges of probate in this State, be *voluntary*, within this definition of the distinction between voluntary and contentious.

After these observations, sir, on the general nature and origin of fees, accruing in the probate offices, I shall proceed to a consideration of the charges contained in these articles.

And the first inquiry is, whether any misconduct or maladministration in office, is sufficiently charged, upon the Respondent, in any of them. To decide this question, it is necessary to inquire, what is the law governing impeachments; and by what rule questions arising in such proceedings are to be determined. My learned colleague, who has immediately preceded me, has gone very extensively into this part of the case. I have little to add, and shall not detain you by repetition. I take it, sir, that this is a *court;* that the Respondent is brought here to be *tried;* that you are his *judges;* and that the rule of your decision is to be found in the constitution and the law. If this be not so, my time is misspent in speaking here, and yours also in listening to me. Upon any topics of expediency, or policy; upon a question of what may be best, upon the whole; upon a great part of those considerations, with which the leading Manager opened his case, I have not one word to say. If this be a *court*, and the Respondent on his *trial* before it; if he be to be tried, and can only be tried *for some offence known to the constitution and the law;* and if evidence against him can be produced only according to the ordinary rules, then, indeed, counsel may possibly be of service to him. But if other considerations, such as have been plainly announced, are to prevail, and that were known, counsel owe no duty to their client which could compel them to a totally fruitless effort, for his defence. I take it for granted, however, sir, that this court feels itself bound by the constitution and the law; and I shall therefore proceed to inquire whether these articles, or any of them, are sustained by the constitution and the law.

I take it to be clear, that an impeachment *is a prosecution for the violation of existing laws;* and that the offence, in cases of impeachment, must be set forth substantially in the same manner as in indictments.—I say *substantially*, for there may be, in indictments, certain technical requisitions, which are not necessary to be regarded in impeachments. The constitution has given this body the power of trying impeachments, without defining what an impeachment is,

and therefore necessarily introducing, with the term itself, its usual and received definition, and the character and incidents which belong to it. An impeachment, it is well known, is a judicial proceeding. It is a *trial*, and conviction in that trial is to be followed by forfeiture and punishment. Hence, the authorities instruct us, that the rules of proceeding are substantially the same as prevail in other criminal proceedings. (2. *Wooddeson*, 611. 4. *Bl. Comm.* 259. 1. *H P. C.* 150. 1. *Chitty's Criminal Law*, 169.) There is, on this occasion, no manner of *discretion* in this court, any more than there is, in other cases, in a judge or a juror. It is all a question of law and evidence. Nor is there, in regard to *evidence*, any more latitude, than on trials for murder, or any other crime, in the courts of law. Rules of evidence are rules of law, and their observance on this occasion can no more be dispensed with than any other rule of law. Whatever may be imagined to the contrary, it will commonly be found, that a disregard of the ordinary rules of evidence, is but the harbinger of injustice. Tribunals which do not regard those rules, seldom regard any other; and those who think they may make free with what the law has ordained respecting evidence, generally find an apology for making free also with what it has ordained respecting other things. They who admit or reject evidence, according to no other rule than their own good pleasure, generally decide everything else by the same rule.

This being, then, a judicial proceeding, the first requisite is, that the Respondent's offence, *should be fully and plainly, substantially and formally described to him.* This is the express requisition of the constitution. Whatever is necessary to be proved, must be alleged; and it must be alleged with ordinary and reasonable certainty. I have already said, that there may be necessary in indictments, cer tain technical niceties, which are not necessary in cases of impeachments. There are, for example, certain things necessary to be stated, in strictness, in indictments, which, nevertheless, it is not necessary to prove precisely as stated. An indictment must set forth, among other things, for instance, the particular day when the offence is alleged to have been committed; but it need not be proved to have been committed on that particular day. It has been holden, in the case of an impeachment, that it is sufficient to state the commission of the offence to have been on or about a particular day. Such was the decision, in Lord Winton's case; as may be seen in *4th Hatsell's Precedents*, 297. In that case, the respondent, being convicted, made a motion to arrest the judgment, on the ground that "the impeachment was insufficient, for that the time of committing the high treason is not therein laid with *sufficient certainty.*" The principal facts charged in that case were laid to be committed "*on or about the months of September, October, or November last;*" and the taking of Preston, and the battle there, which are among the acts of treason, were laid to be done "*about the 9th, 10th, 11th, 12th, or 13th, of November last.*"

A question was put to the judges, "whether in *indictments* for treason or felony it be necessary to allege some certain day upon which the fact is supposed to be committed; or, if it be only alleged in an *indictment* that the crime was committed on or about a certain

day, whether that would be sufficient." And the judges answered, that it is necessary that there be a certain day laid in the indictment, and that to allege that the fact was committed on or about a certain day would not be sufficient. The judges were next asked, whether, if a certain day be alleged, in an indictment, it be necessary, on the trial, to prove the fact to be committed *on that day;* and they answered, that it is *not* necessary. And thereupon the lords resolved, that the impeachment was sufficiently certain in point of time. This case furnishes a good illustration of the rule, which I think is reasonable and well founded, that whatever is to be proved must be stated, and that no more need be stated.

In the next place, the matter of the charge must be the breach of some known and standing law; the violation of some positive duty. If our constitutions of government have not secured this, they have done very little indeed for the security of civil liberty. "There are two points," said a distinguished statesman, "on which the whole of the liberty of every individual depends; one, the trial by jury; the other, a maxim, arising out of the elements of justice itself, that no man shall, under any pretence whatever, be tried upon anything but a known law." These two great points our constitutions have endeavoured to establish; and the constitution of this Commonwealth in particular, has provisions on this subject, as full and ample as can be expressed in the language in which that constitution is written.

Allow me then, sir, on these rules and principles to inquire into the legal *sufficiency* of the charges contained in the first article.

And first, as to the illegality of the time or place of holding the court, I beg to know what there is stated, in the article, *to show that illegality?* What fact is alleged, on which the Managers now rely? *Not one.*—Illegality itself is not a fact, but an inference of law, drawn by the Managers, on facts known or supposed by them, but not stated in the charge, nor until the present moment made known to anybody else. We hear them now contending, that these courts were illegal for the following reasons, which they say are true, as *facts*, viz:

1. That the register was absent;
2. That the register had no notice to be present;
3. That parties had not notice to be present.

Now, not one of these is stated in the article. No one fact or circumstance, now relied on as making a case against the defendant, is stated in the charge. Was he not entitled to know, I beg to ask, what was to be proved against him? If it was to be contended that persons were absent from those courts who ought to have been present, or that parties had no notice, who were entitled to receive notice, ought not the Respondent to be informed, that he might encounter evidence by evidence, and be prepared to disprove, what would be attempted to be proved?

This charge, sir, I maintain is wholly and entirely insufficient. It is a mere nullity. If it were an indictment in the courts of law, it would be quashed, not for want of formality, or technical accuracy, but for want of substance in the charge. I venture to say there is not a court in the country, from the highest to the lowest, in which such a charge would be thought sufficient to warrant a judgment.

The next charge in this article is for receiving illegal fees for services performed. I contend that this also is *substantially* defective, in not setting out what sum *in certain*, the defendant has received as illegal fees. It is material to his defence that he should be informed, more particularly than he here is, of the charge against him. If it be merely stated that for divers services respecting one administration, he received a certain sum, and for divers others, respecting another, another certain sum, and that these sums were too large, (which is the form of accusation adopted in this case,) he cannot know for what service, or on what particular item, he is charged with having received illegal fees. The legal and the illegal are mixed up together, and he is only told that in the aggregate he has received too much. In some of these cases, there is a number of items, or particulars, in which fees are charged and received; but in the articles these items or particulars are not stated, and he is left to conjecture, out of ten, or it may be twenty, particular cases, which one it is, that the proof is expected to apply to.

My colleague has referred to the cases, in which it has been adjudged, that in prosecutions against officers for the alleged taking of illegal fees, this general manner of statement is insufficient. It is somewhat remarkable, that ancient acts of Parliament should have been passed expressly for the purpose of protecting officers, exercising jurisdiction over wills and administration, against prosecutions in this form; which were justly deemed oppressive. The st. 25, Ed. 3, cap. 9, after reciting, "that the king's justices do take indictments of ordinaries, and of their officers, of extortion, or oppressions, and impeach them, without putting in certain, wherein, or whereof, or in what manner they have done extortion;"—proceeds to enact, "That his justices shall not from henceforth impeach the ordinaries, nor their officers, because of such indictments of general extortions or oppressions, unless they say, and put in certain, in what thing, and of what, and in what manner the said ordinaries or their officers have done extortions or oppressions."

The charge in this case, ought to have stated the offensive act, for which the fee was taken; and the amount of the fee received. The Court could then see whether it were illegal. Whereas the article, after reciting certain services performed by the Respondent, some of which are mentioned in the fee bill, and others are not, alleges that *for the business aforesaid* the Respondent demanded and received *other and greater fees than are by law allowed.* Does this mean, that he received excessive fees for every service, or was the whole excess charged on one service? Was the excess taken on those particular services, for which a specific fee is given by the statute, or was it taken for those services not mentioned in the fee bill at all? But further; the article proceeds to state, that afterwards during and upon the settlement of said estate, the Respondent did demand and receive divers sums, as fees of office, other and greater than are by law allowed; *without stating at all what services were rendered, for which these fees were taken!* It is simply a general allegation, that the Respondent received from an administrator, in the settlement of an estate, excessive fees; without stating, in any manner whatever, what the excess was, or even what services were

performed. I beg leave to ask, sir, of the learned Managers, whether they will, as lawyers, express an opinion before this Court, that this mode of accusation is sufficient? Do they find any precedent for it, or any principle to warrant it? If they mean to say, that proceedings, in cases of impeachment, are not subject to rule; that the general principles applicable to other criminal proceedings do not apply; this is an intelligible, though it may be an alarming course of argument. If, on the other hand, they admit, that a prosecution by impeachment is to be governed by the general rules applicable to other criminal prosecutions; that the constitution is to control it; and that it is a judicial proceeding; and, if they recur, as they have already frequently done, to the law relative to indictments, for doctrines and maxims applicable to this proceeding; I again ask them, and I hope in their reply they will not evade an answer, will they, as lawyers, before a tribunal constituted as this, say, that in their opinion, this mode of charging the Respondent is constitutional and legal? Standing in the situation they do, and before such a Court, will they say, that, in their opinion, the Respondent is not, constitutionally and legally, entitled to require a more particular statement of his supposed offences? I think, sir, that candor and justice to the Respondent require, that the learned Managers should express, on this occasion, such opinions on matters of law, as they would be willing, as lawyers, here and elsewhere to avow and defend. I must therefore, even yet again, entreat them to say, in the course of their reply, whether they maintain that this mode of allegation would be sufficient in an indictment; and if not, whether they maintain, that in an impeachment, it is less necessary that the defendant be informed of the *facts* intended to be proved against him, than it is in an indictment. The learned Managers may possibly answer me, that it is their business only to argue these questions, and the business of the Court to decide them. I cannot think, however, that they will be satisfied with such a reply. Under the circumstances in which he is placed, the Respondent thinks that the very respectable gentlemen who prosecute him, in behalf of the House of Representatives, owe a sort of duty, even to him. It is far from his wish, however, to interfere with their own sense of their own duty. They must judge for themselves, on what grounds they ask his conviction from this Court. Yet he has a right to ask—and he does most earnestly ask, and would repeatedly and again and again, ask, that they will state those grounds plainly and distinctly. For he trusts, that if there be a responsibility, even beyond the immediate occasion, for opinions and sentiments here advanced, they must be entirely willing, as professional men, to meet that responsibility.

I now submit to this Court, whether the supposed offences of taking illegal fees, as charged in this article, are set forth legally and sufficiently; either by the common rules of proceedings in criminal cases, or according to the constitution of the State.

As to the manner of stating the offence in this article—I mean the allegation that the Respondent refused to give, on request, an account of items of fees received, it appears to me to be substantially right, and I have no remarks to make upon it. The question upon that will be, whether the fact is proved.

All the objections which have been made to the first article, apply equally to the second; with this further observation, that for the services mentioned in this article the fee bill makes no provision at all. The same objections apply also to the third, fourth, and fifth articles.

It seems to us, sir, that all these charges for receiving illegal fees, without setting out, in particular, what service was done, and what was the amount of excess, are insufficient to be the foundation of a judgment against the Respondent. And especially all the articles, in which he is charged with receiving fees for services not specified in the fee bill; it being not stated, what he would be properly entitled to in such cases, by usage, and the practice of the courts, and there being no allegation that the sum received was an unreasonable compensation for the services performed. In this respect the articles consider that to be settled by positive law, which is not so settled. The second article, for example, alleges that the Respondent demanded and received, for certain letters of guardianship granted by him over persons *non compotes mentis* "*other and greater fees than are by law allowed therefor.*"—This supposes, then, that *some* fees are allowed by law therefor; yet, this is the very case in which it has been contended by the Managers that *no fee whatever was due;* there being none mentioned in the fee bill. Between the words of the article, and the tenor of the argument, there appears to me to be no small hostility. Both cannot be right. They cannot stand together. There should be either a new argument to support the article, or a new article to meet the argument.

Having made these observations on the legal sufficiency of all the articles which charge the Respondent with holding unlawful courts, and demanding and receiving unlawful fees, before proceeding to those which advance charges of a different nature against him, allow me to advert to the evidence which has been given, on these five first articles respectively; and to consider what unlawful act has been *proved* against the Respondent in relation to the matters contained in them.

In the first place, it is proved, that the Respondent held a special Probate Court at Groton, October 14, 1816; and at such court granted letters of administration to one Tarbell. This court the register did not attend. With respect to parties concerned in the business then and there to be transacted, they all had notice, as far as appears; and no one has ever been heard to complain on that account.

It has now been contended, sir, by the learned Managers, that this court was holden unlawfully, because not holden at a time previously fixed by law. They maintain that judges of probate can exercise no jurisdiction, except at certain *terms*, when their court is to be holden.

On the contrary the Respondent has supposed, and has acted on the supposition, that he might lawfully hold his court, for the transaction of ordinary business, at such time and place as he might think proper; giving due and proper notice to all parties concerned. He supposes he might so have done, independently of the provisions of any statute; and he supposes, moreover, that he was authorised so to do, by the express provision of the statute of 1806.

The first inquiry, then, is, whether the probate courts, in this Commonwealth, be not courts which may be considered as always

open; and authorised, at all times, to receive applications, and transact business; upon due notice to all parties; or whether on the contrary their jurisdiction can only be exercised, in *term*, or at such stated periods and times as may be fixed by law. It is true, that the common law courts have usually fixed terms, and can exercise their powers only during the continuance of these terms. In England, the termination as well as the beginning of the term is fixed by law. With us, the first day only is fixed, and the courts, having commenced on the day fixed by law, hold on as long as the convenience of the occasion requires.

In early ages the whole year was one continued term. After the introduction of Christianity among the western nations of Europe, the governments ordained that their courts should be always open, for the administration of justice; for the purpose, among other things, of showing their disapprobation of the heathen governments, by whom the *dies fasti et nefasti* were carefully, and as they thought, superstitiously regarded. In the course of time, however, the church interfered; and prevailed to rescue certain seasons of the year, which it deemed holy time, such as Christmas and Easter, &c. from the agitations of forensic discussion. The necessities of rural labor afterwards added the harvest months to the number of the vacations. The vacations were thus carried out of the year, and what was left was term. Thus, even with regard to the common law courts, the provisions respecting terms were made, not so much for creating terms as creating vacations. And for this reason it probably is, that as well the termination as the commencement of the term should be established by law.

In respect to the spiritual courts, no such positive regulations, as far as I can learn, appear to have been made. Their jurisdiction is one which seems necessarily to require more or less of occasional as well as stated exercise. The bishop's jurisdiction, over wills and administrations, was not local, but personal. Hence he might exercise it, not only when he pleased, but where he pleased; within the limits of his diocese, or without. He might grant letters of administration, for instance, while without the local limits over which his jurisdiction extends, because it is a personal authority which the law appoints him to exercise. "The power of granting probates is not local, but is annexed to the person of the archbishop, or bishop; and therefore a bishop, or the commissary of a bishop, while absent from his diocese, may grant probate of wills, respecting property within the same; or if an archbishop, or bishop, of a province or see in Ireland happens to be in England, he may grant probate of wills relative to effects within his province or diocese." (*Toller*, 66. 4. *Burn.* 285.)

Notwithstanding this, however, the canons ordain, that the ordinaries shall appoint proper places and times, for the keeping of their courts; such as shall be convenient for those who are to make their appearance there; this is for the benefit of suitors. The object is that there may be some certain times, and places, when and where persons having business to be transacted may expect to find the judge; and it by no means necessarily takes away the power of transacting business at other times and places. The ordaining of such a

rule plainly shows, that before it was made, these judges held their courts when and where they pleased, and only when and where they pleased.

If we recur again to the history of this Commonwealth, we shall find, that what necessity or convenience had established in England, the same necessity or convenience soon established here.

By the colony charter, no provision was made for a court for the probate of wills and granting administrations. In 1639 it was ordained, that there should be records kept, of all wills, administrations, and inventories. (*An. Ch.* 43.)—In 1649 an act was passed requiring wills to be proved at the *county court*, which should next be after thirty days from the death of the party; and that administration should be there taken, &c. (*Ibid* 204.)

These county courts were courts of common law jurisdiction, and were holden at stated terms. But experience seems soon to have shown, that from the nature of probate jurisdiction, its exercise could not be conveniently confined to stated terms; for in 1652, an act was passed, *authorising two magistrates, with the recorder of the county court, to allow and approve of wills, and grant administrations; the clerk to cause the will or administration to be recorded.* (*Ibid.* 204.) The reason of passing this act is obvious. The county court consisted of many magistrates. They assembled to form a court, only at stated terms. On this court the law had conferred the powers of probate of wills and granting administrations; and like other business it could of course only be transacted at stated terms. This was found to be an inconvenience, and the law which I have cited was passed to remedy it. So that instead of confining the exercise of the jurisdiction of these courts to stated terms, we find the law has done exactly the contrary. Not only the analogy which they bear with other courts of similar jurisdiction, but our own history, and the early enactments of the colonial legislature all conspire to refute the notions which have been advanced—I cannot but think somewhat incautiously advanced—on this occasion.

The provisions of the constitution, requiring judges of probate to hold their courts on certain fixed days, is perfectly and strictly consistent nevertheless, with the occasional exercise of their powers at other times. The law has had two objects, in this respect; distinct, indeed, but consistent. One is that *there should be certain fixed days*, when it should be the duty of the judges to attend to the business of their offices, and the applications of suitors; the other, that they might, when occasion required, perform such duties, and attend to such applications *on other days*. The learned Managers seem to have regarded these provisions of law as repugnant, whereas they appear to us to consist perfectly well together.

If it were possible, sir, that we were still mistaken in all this, there is yet the provision of the special law of 1806, which would seem to put an end to this part of the case. This statute has been already stated; its terms are express, and its object plain beyond all doubt or ambiguity. Not only does this act, of itself, afford the most complete justification to the Respondent in this case, but it proves also, either that the Legislature or the learned Managers have misunderstood the requisition of the constitution in regard to

fixed days for holding probate courts. My colleagues have put this part of the argument beyond the power of any answer. I leave it where they left it.

With respect to notice to parties, I have already said that it is not at all proved, or pretended to be proved, that there was any person entitled to notice, who did not receive it. It would be absurd and preposterous now to call on the Respondent to give positive proof of notice to all persons concerned. As it was his duty to give such notice, it is to be presumed he did give it, until the contrary appear. Besides, as no omission to give notice is stated in the article, as a fact rendering the court illegal, how is he expected to come here prepared to prove notice?

I have little to add, sir, to what my learned colleague who immediately preceded me has said respecting the necessity of the register's attending these special courts.—One of the learned Managers, if I mistake not, (Mr. Shaw) has said, that the statute of 1806, which requires notice to parties, requires notice also to the register. I see no sort of reason for such a construction of the act. The words are, that the judge may appoint such times and places for holding his court as he shall deem expedient, giving public notice thereof, or *notifying all concerned*, and has no relation to the officers of the court. Neither the register, nor the crier, nor the door keeper, is, I should imagine, within this province; and yet I suppose one to be as much within it as the other.

The presence of the register cannot be essential to the existence of the court, any more than the presence of the clerk is essential to the existence of any other court. Like other courts, the court of probate has its clerk, called a register, but he is no more part of the court, than the clerk of the Supreme Judicial Court is a component part of that court.

No provision appears to have been made by the Province laws for the appointment of a register. The ordinary having the whole power over the subject of the probate of wills and granting administrations, might allow a clerk or register to his surrogate, or not, at his pleasure. It was necessary of course that records should be kept, but this might be done by the judge himself, as some other magistrates keep their own records. There are certain statutes which speak of the register's office, but which seem only to mean the *place* where the records are kept. They contain no provision for the appointment of such an officer, nor any description of his duties. (4. W. and M. ch. 2.) It appears, as I am informed, by the Suffolk probate records, that a register was appointed by the governor, by virtue of his power as Supreme Ordinary, immediately after the issuing of the Provincial charter. The first provision made by law for this officer, if I mistake not, is contained in the statute of 1784; (vol. 1. page 155) and the duties of the officer are well described in that act. He is to be the register of wills and letters of administration, and to be *keeper* of the records. His signature or assent is necessary to the validity of no act whatever. He is to record official papers, and to keep the records and documents which belong to the office.

It is quite manifest, from the laws made under the charter, as well as those enacted since the adoption of the present government, that the presence of the register has not been essential to the existence of a legal probate court—the proof of this is, that certain acts or things, by these statutes, may be done by the judge without the register. By 6 of Geo. 1. ch. 3. it is provided, that persons to take an inventory of one deceased, shall be appointed and sworn by the Judge of probate, *if the estate be in the town where he dwells, or within ten miles thereof;* otherwise by a justice of the peace. (P. L. 222.) By 4. Geo. 2. ch. 3. appraisers are to be sworn by the judge, if the estate be within ten miles of his dwelling house. (Ib. 286.)

By the act of March 1784, when a minor lives more than ten miles *from the Judge's dwelling house*, his choice may be certified to the judge by a justice of the peace.

These several laws plainly contemplate the performance of certain acts by the judge, not at probate courts holden at stated times, and without the presence or assistance of the register.

And now, sir, I have finally to remark, on the subject of holding these special courts, the Respondent is proved to have followed the practice which he found established in the office when he was appointed to it. The existence of this practice is proved, beyond all doubt or controversy, by the evidence of Dr. Prescott.

As to the holding of special courts, therefore, the defendant rests his justification, on what he conceives to be the general principle of law, on the express provision of the statute, and the usage, which has been proved to exist before and at the time when he came into the office.

The charge, Mr. President, in the first article, for taking illegal fees, has been fully considered by other counsel. I need not detain the Court by further comment. It is true, that for what is called a set of administration papers, the Respondent received in this case five dollars fifty-eight cents. It is true also, that for the same business, done at a stated court, the fees would have been but three dollars and sixty cents. The reason for this difference is fully stated in the defendant's answer. But it is also true, that the usual sum at stated courts, viz. three dollars and sixty cents, is made up by the insertion of fees for sundry services not specified in the fee bill. Indeed, the learned Managers have not, as has been so often before observed, even yet told us what would have been the precise amount of legal fees in this case. They appear to be marvellously shy of figures. If the Court adopt the opinion of the learned Managers, that no fees are due, where none are specially provided, and that for receiving fees in such cases an officer is impeachable, then there is no doubt that the Respondent may be impeached and convicted, for his conduct in regard to every administration which he has granted for fifteen years; and there is as little doubt that, on that ground any judge of probate in the Commonwealth is impeachable; as must be well known to every member of this Court, whether they suffer it to be proved here or not.

It is utterly impossible to know, by this article itself, *in what* it was intended to charge the Respondent with having received illegal

fees.—Was it for the order of notice?—But the statute allows no fee for that. Was it for granting administration?—But it is not stated whether it was a litigated case or not, and therefore it cannot be known what he might lawfully receive.

It is not denied, however, that every paper executed by the judge, in this case, and every service performed by him, was proper and necessary for the occasion. Even the learned Managers have not contended that anything could be dispensed with. If, therefore, the amount had not exceeded the usual sum, it would seem past all controversy, that the Respondent stood justified, if he is right in the general grounds which have been assumed. The question then is, as to the right to the additional two dollars. And this, I apprehend, stands on precisely the same ground, as his right to fees for services not set down in the fee bill, viz; on the ground of a *quantum meruit*, or reasonable compensation for labor performed. This special court was holden expressly for the benefit of Tarbel, and at his instance and request. He is charged only with the necessary and unavoidable expenses of the court; expenses which must be borne, either by the judge himself, or the party for whose benefit they were incurred. It was not so much an extraordinary compensation to the judge, but a reimbursement of expenses actually incurred by him. Here again he is found only to have followed the established practice of the office. He has done no more than his predecessor had done It is clearly proved, that that predecessor did habitually hold these special courts on request, and that the necessary expenses of proceeding therein before him did exceed those of similar proceedings at the stated courts. There can be no complaint, in this case, of the *amount*. If he had a right to receive anything, it must be conceded he did not receive too much. A practice of this sort may lead to inconvenience; possibly to abuse; but it did not originate with the Respondent, nor does it appear that abuse has followed it, in his hands. If he were authorised to hold these special courts, and if they were *necessarily* attended with some augmentation of expense, it would seem perfectly reasonable that those for whom the expense was incurred should defray it. The books teach us, that "an officer who takes a reward, which has been usual in certain cases, for the more diligent or expeditious performance of his duty, cannot be said to be guilty of extortion; for otherwise it would be impossible, in many cases, to have the law executed with success." (*Bac. Abr.* "*Extortion.*") These sums were paid *voluntarily*. The Respondent in no proper sense *demanded them*.—He did not refuse to do his official duty till they were paid. So of those sums paid for services not mentioned in the fee bill. Several of these things might have been done by the party himself, or his counsel; such as drawing petition, bond, &c. Yet it was *usual* to have these papers prepared at the probate office, and to pay for them, together with the other expenses. This being the usual course of things, and the party complying with it, without objection, and paying *voluntarily*, there can be no reason, I think, to call it extortion. When the party applied, in this case, for administration papers, he must be supposed to have applied for what was *usual*. He received what everybody else had received for fifteen years, and he paid for what

he received at the customary rates, without objection. It ought to be considered therefore as a voluntary payment.

This differs this case altogether from that cited from Coke. There the party refused to do an official act, till an illegal sum was paid. It was an act which the party had a right to have performed—to have it *then* performed—and to have it performed for a stated fee—refusing to do his duty, in this respect, till other fees were paid, the officer doubtless was guilty of extortion. But in this case the money was paid voluntarily for services rendered voluntarily. Most of the services were not, strictly speaking, official services. As before observed, the petition, bond, &c. might have been prepared elsewhere, if the party had so chosen. If he had so chosen, and had produced those papers, regularly prepared and executed, and the judge had then refused him a grant of administration, until he had, nevertheless, purchased a set of these papers out of the probate office, then this case would have resembled the one quoted. As the facts are, I think there is no resemblance.

I have, thus far, endeavoured to show that the Respondent's conduct, in relation to fees, was *legal*. If we have failed in this, the next question is, whether his conduct be so clearly illegal, as to satisfy the Court that it must have proceeded from corrupt motives. And it is to this part of our case, that we supposed the evidence of what had been usual in other courts, and thought to be legal by other judges would be strictly applicable and highly important.

It was certainly our belief, that as the Respondent is accused of receiving illegal and excessive fees, in cases where fees are not limited by any positive law, the usage and practice of other judges, in similar cases, known to the whole Commonwealth, and continued for many years, would be evidence on which the Respondent might rely to rebut the accusation of intentional wrong.—We have shown to this tribunal, that in an indictment on this same statute, in the Supreme Judicial Court, evidence of this sort was admitted, and the defendant acquitted on the strength of it. We had supposed it a plain dictate of common sense, that where a judge was accused of acting contrary to law, he might show, if he could, that he acted honestly, though mistakenly, and, to this end, he might show that other judges had understood the law in the same way as he had understood it. And if he were able to show, not only that one judge, but many, and indeed, all judges had uniformly understood the law as he himself had, it would amount to a full defence. The learned Managers have opposed the introduction of this evidence; and have prevailed on this court to reject it. Setting out with the proposition, that, by law, the Respondent could receive no fees, where none are expressly provided by statute, they have followed up this doctrine to the conclusion, that if fees have been taken in any such case by the Respondent, he must be convicted, although he should be able to show, as he is able to show, that every court, and every judge in the State has supposed the law to be otherwise, than the Managers now assert it, and have uniformly acted upon that supposition. I am not, sir, about to enter into another discussion, on this point. I am persuaded it would be fruitless. The questions which we proposed to put to the witnesses are in writing,

and therefore cannot easily be misrepresented. The Court has, on the objection of the Managers, overruled these questions, and shut out the evidence. As a matter decided in the cause, and for the purposes of the cause, we must, of course, submit to the decision. Still the question recurs, if the known usage and practice of the courts, offered no rule or guide, by which the Respondent was to direct his conduct, in relation to fees for services not enumerated in the fee bill—what rule was to direct him? What is the law, which he has broken? We ask for the rule, which ought to have governed his conduct, and has not governed it; we receive for answer nothing intelligible but this, that where the statute has not expressly given fees, no fees are due, and it is illegal and impeachable to receive them. If the Court should be of that opinion, a case is made out against the Respondent. If it should not be of that opinion, as we trust it will not, then we submit that no case has been made out against him, on this charge.

As to the charge of having refused to give Tarbell an account of items or particulars of the fees demanded, it is enough to say the charge is not proved. On his cross examination the witness would not state that he asked for items or particulars. He appears simply to have wished a general voucher, to show what sums he had paid for expenses in the probate office, and to have been told that such voucher was not necessary, as the sums would be of course allowed in his account.

I now ask, sir, where is the proof of *corruption*, in relation to any of the matters charged in this first article? Where is the moral turpitude, which alone ought to subject the Respondent to punishment? Is there anything in the case which looks like injustice or oppression? As to the special courts, holden for the convenience of the party, no injury arose from them to anybody. The witness himself says they were a great accommodation to him, and saved the estate much money. One learned Manager has said these courts *may* lead to inconvenience and abuse. He has taxed his ingenuity to conjecture, rather than to show, what possible evils might hereafter arise from them. Yet he does this with the statute open before him, which expressly authorises these courts, and the repeal of which would seem to be the proper remedy to relieve him from his apprehensions.

On the whole, sir, I trust that the Respondent has been able to give a satisfactory answer to everything contained in the first article. That he is not only not legally proved to be guilty, but that his conduct was in all respects unblamable and inoffensive;—and that he will go from this cause, not only acquitted of the charges in the article, but also, without having suffered, in his reputation, from the investigation which it has occasioned.

Mr President, the remarks which have been made on the first article, are generally applicable to the four succeeding, and render it unnecessary to comment on those articles, separately and particularly.

The sixth article turns out to be so little supported by any proof, that I do not deem it necessary to add to what has been said upon it. The testimony of Dr. Prescott, and the date of the letter produced, set this long forgotten occurrence in its true light.

The seventh article appears to me to be a mere nullity. It charges no official misconduct whatever. The learned Managers, I suppose, are of the same opinion, otherwise they would have been content with our admission of the article, as it stands, and not have contended so ardently, for the privilege of proving what was not stated. I have found myself, sir, more than once mistaken, in the course of this trial, but have not felt more sensible, at my own mistakes, on any occasion, than when I found myself wrong in supposing that neither the learned Managers, nor any other *lawyers*, could be found to contend, that in a criminal case more could be *proved* against a defendant, than had been stated; and that it was not enough for such defendant to admit the truth of the facts in the written allegation against him, precisely as they stood, and to demand the judgment of the court thereon. The constitution says that every man's offence shall be *fully and plainly, substantially and formally* described and set forth. The learned Managers seem so to construe this provision, as that, nevertheless, if facts be not alleged which show any offence at all to have been committed, still other facts may be found, under the words *unlawfully and corruptly*, which shall amount to an offence. A commentary this, sir, on the constitution of the Commonwealth, of which I imagine the profession generally will not be emulous of dividing the credit with the Honorable Managers.

This seventh article charges the Respondent with no misbehavior as a *judge*. The only offence imputed to him is one which he is said to have committed as an *attorney*. These over-shadowing words, "unlawfully and corruptly," beneath the protection of which the learned Managers have sought to shelter themselves, are applied to the Respondent's conduct simply as an attorney at law, and not as judge of probate.

It is proved, in point of fact, that the Respondent performed certain merely clerical labor for a guardian, for which he was paid a reasonable and moderate compensation. The sum thus paid him was allowed, and as we suppose justly allowed, in the subsequent settlement of the guardian's account.

The eighth, ninth, tenth, eleventh, thirteenth and fourteenth articles have been fully considered by my colleagues, and I will not detain the Court with further remarks on those articles.

It is the *twelfth*, of these articles, sir, on which the learned Managers seem most confidently to rely. Whatever becomes of the rest of the case, here, at least, there is thought to be a tenable ground—Here is one verdant spot, where impeachment can flourish; a sort of Oasis, smiling amid the general desolation, which the law and the evidence have spread round the residue of this accusation.

I confess, sir, that I approach to the consideration of this article, not without some apprehension. But that apprehension arises from nothing in the real nature of the charge, or in the evidence by which it is supported. My apprehension and alarm arise from this; that in a criminal trial, on a most solemn and important occasion, so much weight should be given to mere *coloring*, and *declamation*, under the form of a criminal accusation. In my judgment, sir, there is serious cause of alarm, when in a court of this character, accusations are brought forward, so exceedingly loose and indefi-

nite, and arguments are urged in support of them, so little resembling what we are accustomed to hear in the ordinary courts of criminal jurisdiction.

The offence, in this article, whatever it be, instead of being charged and stated in ordinary legal language, is thrown into the form of a *narrative*. A *story*, taken from the mouth of a heated, angry, and now *contradicted* witness, is written down at large, with every imaginable circumstance of aggravation, likely to strike undistinguishing minds; and this *story*, thus told, is the very *form* in which the article is brought. Here we have, in the article itself, a narrative of all the evidence; we have a dialogue between the parties, are favored so far as to be shown, by marks of quotation, what sentiments and sentences belong to the respective parties in that dialogue. All convenient epithets, and expletives are inserted in this dialogue. We find the "*urgent and repeated*" demand of the Respondent for fees. We perceive also that he is made to lead the conversation, on all occasions. *He proposed* to advise and instruct; *he proposed* to allow the sum in the account; and it was, again, on *his proposition* so to insert it, that it was paid. He is represented as wanting in manners, and decorum, as well as in official integrity. It is said he *overheard* a conversation; and that therefore he prepared to give his advice, before it was asked. In short, sir, this article contains whatever is most likely to cause the Respondent to be convicted, before he is heard. I do most solemnly protest against this mode of bringing forward criminal charges. I put it to the feeling of every honorable man, whether he does not instinctively revolt from such a proceeding?—In a government so much under the dominion of public opinion, and in a case in which public feeling is so easily excited, I appeal to every man of an honorable and independent mind, whether it be not the height of injustice to send forth charges against a public officer, accompanied with all these circumstances of aggravation and exasperation? Here the evidence, as yet altogether *ex parte*, the *story* told by a willing, if not a prejudiced, witness, goes forth with the charge, embodied in the charge itself, without any distinction whatever between what is meant to be charged as an offence, and the evidence which is to support the charge. For my own part, sir, I can conceive of nothing more unjust. Would it be tolerated for one moment in a court of law, I beg to ask, that a prosecutor, departing from all the usual forms of accusation, should tell his own story, in his own way, mix up his evidence with his charges, and his own inferences with his evidence, so that the accusation, the evidence, and the argument, should all go together?—A judge would well deserve impeachment and conviction who should suffer such an indictment to proceed.

In this case, the whole matter might have been stated in five lines. It is simply this, and nothing more, viz; that the Respondent wishing, as an attorney, to obtain certain fees from a guardian, promised, if they were paid, to allow them in the guardianship account, as judge; and being paid he did so allow them. This is the whole substance and essence of the charge.

Notwithstanding our entire confidence in this Court, we cannot but know that the Respondent comes to his trial on this article un-

der the greatest disadvantages. There is not a member of the Court, nor a reading man in the community, who has not read this charge, and thereby seen at once the accusation, and the evidence, which was to support it. The whole story is told, with all the minute circumstances, and no ground is left, for the reservation of opinion, or whereupon charity itself can withhold its condemnation. Far be it from me, sir, to impute this to design. I know not the cause; but so far as the Respondent is concerned, I know it had been just as fair and favorable to him, that the orginal *ex parte* affidavit, upon which the article was founded, should have been headed as *No.* 12, and inserted among the articles of impeachment. This, sir, is the true ground of the alarm which I feel, in regard to this charge; an alarm, I confess, not diminished by perceiving that this article is so great a favorite with the learned Managers; for when obliged to give up one and another of their accusations, they have asked us, with an air of confidence and exultation, whether we expect them to give up the twelfth article also.

I will now, sir, with your permission, proceed to consider whether this article states any legal offence. Stripped of everything but what is material, it appears to me to amount to no more than this; viz. 1. That the Respondent gave professional advice to a guardian, about the concerns of his ward, and received fees for it. 2. That he allowed those fees in the guardianship account. If this be the substance of the article, then the question follows the division which I have mentioned, and is, 1. Whether he had a right to give such advice, and to be paid for it; and, 2. Whether he had a right to allow the sum so paid in the guardian's account. I think these are the only questions to be considered. It cannot be material, certainly, whether *Ware*, the guardian, paid the fee willingly or unwillingly. The fact is true, that the Respondent received it. If he had no right to it, then he must take the consequence; if he had a right to it, then there was nothing wrong but *Ware's* want of promptitude in paying it. Nor is it of any importance, supposing him to be right in allowing this fee in the guardian's account, whether he interlined the charge, in an account already drawn out, or had the account drawn over, that it might be inserted. Here again, we find a circumstance of no moment in itself, put forth to be prominent and striking, in this charge, and likely to produce an effect. It is said the sum was allowed by *interlineation;* as if the Respondent had committed one crime to hide another, and had been guilty of *forgery*, to cover up *extortion.* Sir, not only for the sake of the Respondent, but for the sake of all justice, and in behalf of all impartiality and candor, I cannot too often or too earnestly express my extreme regret, at the manner of this charge. On a paper not yet finished and recorded, what harm to make an alteration, if it be of a thing in itself proper to be done? Is it not done every day, in every court?—Not only affidavits, processes, &c. but also minutes, decrees and judgments of the Court, before they are recorded, are constantly altered *by interlineation*, by the Court itself, or its order. The paper was in this case before the judge. It had not been recorded. If any new claim had then been produced, fit to be allowed, it was proper to allow it, and certainly not criminal to insert the allowance *by interlineation.*

If, sir, the substance of everything done by the Respondent in this case was lawful, then there never can justly be a criminal conviction, founded on the mere manner of doing it; even though the manner were believed to be as improper and indecorous as Ware would represent it. There is therefore no real inquiry, in this case, as I can perceive, but whether the Respondent had a right to give advice, and to be paid for it; and whether he had a right to allow it in the account.

And, in the first place, sir, had the Respondent a right to give professional advice to this guardian, respecting the estate of his ward?

It has frequently, perhaps as often as otherwise happened, that judges of probate have been practising lawyers. The statute book shows, that it has all along been supposed that this might be the case. There are acts, which declare that in particular, specified cases, such as appeals from their own judgments, they shall not act as counsel; implying of course that in other cases they are expected so to act, if they see fit. Until the law of 1818, there was nothing to prevent them from being counsel for executors, administrators and guardians, as well as any other clients. My colleague who first addressed the Court has fully explained the history and state of the law in this particular. There being then no positive prohibition, is there anything in the nature of the case, that prevents, or should prevent, in all cases, a judge of probate from rendering professional assistance to executors, administrators or guardians. I say in all cases, and supposing no fraudulent or collusive intention. The legislature has now passed a law on this subject, which is perhaps very well, as a general rule, and now, of course, binding in all cases. But before the passing of this law, it can hardly be contended, that in no case could a judge of probate give professional advice to persons of this character.—I admit, most undoubtedly, sir, that if a case of collusion, or fraud were proved, it would deserve impeachment. If the judge and the guardian conspired to cheat the ward, a criminal conviction would be the just reward for both. They might go into utter disgrace together, and nobody would inquire which was the unjust judge, and which the fraudulent guardian; "which was the justice, and which was the thief." But in a case of fair and honest character, where the guardian needed professional advice, and the judge was competent to give it, I see no legal objection. No doubt a man of caution and delicacy would generally be unwilling to render professional services, upon the value of which he might be afterwards called upon officially to form an opinion. He would not choose to be under the necessity of judging upon his own claim. Still there would seem to be no legal incompatibility. He must take care only to judge right. In various other cases, judges of probate are or may be called on to make allowances for moneys paid to themselves. It is so in all cases of official fees. It might be so, also, in the case of a private debt due from the estate of a ward to a judge of probate. If, in this very case, there had been a previous debt due from *Ware's* ward to the Respondent, might he not have asked *Ware* to pay it?—Nay, might he not have "*demanded*" it: might he not even have ventured to make an "*urgent and*

repeated request," for it?—And if he had been so fortunate as to obtain it, might he not have allowed it in Ware's guardianship account? —And although he had been presumptuous enough to insert it *by interlineation*, among other articles in the account, before it was finally allowed and passed, instead of drawing off a new account, would even this have been regarded as flagrant injustice, or high enormity?—Now I maintain, sir, that the Respondent had in this case a right to give professional advice; and a right to be paid for it; and, until paid, his claim was a *debt*, due him from the ward's estate, which he might treat like any other debt. He might receive it, as a debt, and then as a debt paid allow it in the guardian's account

As before observed, the first question is, whether he could rightfully give this advice. It was certainly a case in which it was proper for the guardian to take legal advice of somebody. The occasion called for it, and we find the estate to have been essentially benefited by it. It is among the clearest duties of those who act in situations of trust, to take legal advice, whenever it is necessary. If they do not, and loss ensues, they themselves, and not those whom they represent, must bear that loss. There can be no clearer ground, on which to make executors, administrators, and guardians personally liable for losses which happen to estates under their care, than negligence in not obtaining legal advice, when necessary and proper. If, instead of giving this fee to the Respondent, the guardian had given it to any other professional man, would anybody have thought it improper?—I presume no one would Then, what was there, in the Respondent's situation, which rendered it improper for him to give the advice? It concerned no matter that could come before him—It was wholly independent of any proceeding arisen, or that could arise, in his court. It interfered in no way with his judicial duty, any more than it would have done to have given the same advice to the ward himself, before the guardianship. He had then as good right to give this advice to the guardian, as he would have had to have given it to the ward.

And, sir, in the second place, I think it plain, that if he had a right to give the advice, and to be paid for it, he had not only the right but was bound to allow it in the guardian's account. This article is attempted to be supported altogether by accumulating circumstances, no one of which bears resemblance to anything like a legal offence. Is the Respondent to be convicted for having given the advice? "No," it is said, "not that alone, but he demanded a fee for it." Is he to be convicted then, for giving advice, and for demanding a fee for it, it not being denied that it was a fit occasion for somebody's advice?—"No, not convicted for that alone, but he *insisted* on a fee, and was *urgent*, and pressing for it." If he had a right to the fee, might he not *insist* upon it, and be urgent for it, till he got it, without a violation of law? "But then he promised to allow it in the guardian's account, and obtained it by means of this promise, and did afterwards allow it." But if it ought to be paid, and the guardian paid it, ought it not to be allowed in his account, and could it be improper for the Respondent to say he should so allow it, and actually so to allow it? "But did he not allow it by *interlineation*?" What sort of interlineation? The account was

before him, unrecorded; this came forward, as a new charge: and for convenience and to save labor, it was inserted among other charges, without a new draught; and this is all the interlineation there is in the case.

I now ask you, sir—I put it to every member of this Court, upon his oath and his conscience, to say *on which of these circumstances the guilt attaches. Where is the crime?* If this charge had been carried to the account *without interlineation,* would the Respondent have been guiltless?—If not, then the interlineation does not constitute his guilt. *If the fee had been paid to some one else, and then allowed, in the same manner it was allowed,* would the Respondent have been guiltless? If so, *then the crime is not in the manner of allowing the charge.* If the guardian had *urged and pressed* for the Respondent's advice, and in receiving it had paid for it willingly and cheerfully, and it had been properly allowed in the account, would the Respondent then have been guiltless? *If so, then his mere giving advice, and taking fees for it, of a guardian, does not constitute his crime.* In this manner, sir, this article may be analyzed, and it will be found that no one part of it contains the criminal matter—and if there be crime in no one part, there can be no crime in the whole. It is not a case of right acts done with wrong motives, which sometimes may show misconduct, all taken together, although each circumstance may be of itself indifferent. Here is official corruption complained of. We ask, in what it consists. We demand to know the legal offence which has been committed. A narrative is rehearsed to us, and we are told that the result of that must be conviction; but on what legal grounds, or for what describable legal reason, I am yet at a loss to understand.

The article mentions another circumstance, which, whether true or false, must exceedingly prejudice the Respondent, and yet has no just bearing on the case. It is said the Respondent told Ware, that if he would pay this fee, the "overseers need know nothing about it." Now, sir, what had the overseers to do with this?—no more than the town crier. Those parts of the account which consisted of expenses incurred in their neighbourhood, were properly enough, though not necessarily, subjected to their examination. They had an interest in having the account right, and their approbation was a convenient voucher. But what had they to do, with the propriety of the guardian's taking legal advice, for the benefit of his ward? They could not judge of it, nor were they to approve or disapprove his charge for obtaining such advice Why, then, I ask, sir, was this observation about the overseers introduced, not only as evidence, but into the body of the charge itself, as making a part of that charge? What part of any known legal offence does that observation, or others like it, constitute? Nevertheless, sir, this has had its effect, and in my opinion a most unjust effect.

I will now, sir, beg leave to make a few remarks on the evidence adduced in support of this article. Of those facts which I have thought alone material, there is no doubt, nor about them any dispute. It is true, that the Respondent gave the advice, and received the fee, and allowed it in the account. If this be guilt, he is guilty. As to everything else, in the articles—as to all those allegations

which go to degrade the Respondent, and in some measure affect his reputation, as a man of honor and delicacy—they rest on *Ware*, and on Ware alone. Now, sir, I only ask for the Respondent the common advantages allowed to persons on trial for alleged offences. I only entreat for him from this Court the observance of those rules which prevail on all other occasions, in respect to the construction to be given to evidence, and the allowances which particular considerations render proper.

It is proved, that this witness has had a recent misunderstanding with the Respondent, and that he comes forward, only since that misunderstanding, to bring this matter into public notice.—Threats of vengeance, for another supposed injury, he has been proved to have uttered more than once.—This consideration alone, should lead the Court to receive his evidence with great caution, when he is not swearing to a substantial fact, in which he might be contradicted, but to the *manner* of a transaction. Here is peculiar room for misrepresentation, and coloring, either from mistake or design What a public officer *does*, can be proved; but the mere *manner*, in which he does it, every word he may say, every gesture he may make, cannot ordinarily be proved; and when a witness comes forth who pretends to remember them, whether he speaks truth or falsehood, it is most difficult to contradict him. It is in such a case therefore that a prejudiced witness should be received with the utmost caution and distrust.

There is, sir, another circumstance of great weight.—*This is a very stale complaint. It is now nearly six years, since this transaction took place.* Why has it not been complained of before?—There is no new discovery. All that is known now, was known then. If *Ware* thought of it then, as he thinks of it now, why did he not complain then? What has caused his honest indignation so long to slumber, and what should cause it to be roused only by a quarrel with the Respondent?

Let me ask, sir, what a grand jury would say to a prosecutor, who, with the full knowledge of all the facts, should have slept over a supposed injury for six years, and should then come forward to prefer an indictment?—What would they say especially if they found him apparently stimulated by recent resentment, and prosecuting, for one supposed ancient injury, with the heat and passion excited by another supposed recent injury? Sir, they would justly look on his evidence with suspicion, and would undoubtedly throw out his bill. Justice would demand it; and in my humble opinion justice demands nothing less on the present occasion.

But, sir, there is one rule of a more positive nature, which I think applicable to the case; and that is, that a witness detected in one misrepresentation is to be credited in nothing. This rule is obviously founded in the plainest reason, and it would be totally unsafe to disregard it. Now if there be any one part of *Ware's* testimony, more essential than all the rest, as to its effect in giving a bad appearance to the Respondent's conduct, it is that in which he testifies that the Respondent *volunteered*, in the case, and offered his advice before it was asked. This is a most material part of the whole story; it is indispensable to the *keeping* of the picture which the learned

Managers have drawn.—And yet, sir, in this particular, *Ware* is distinctly and positively contradicted by Grout. Now, sir, if we were in a court of law, a jury would be instructed, that if they believed Ware had wilfully deviated from the truth, in this respect, nothing which rested solely on his credit would be received as proved. We ask for the Respondent, in this, as in other cases, only the common protection of the law. We require only that those rules, which have governed other trials, may govern his; and according to these rules, I submit to the Court that it cannot and ought not to convict the Respondent, even if the facts sworn to would, if proved, warrant a conviction, upon the sole testimony of this witness. Even if we were sure that there were no other direct departure from the truth, yet in the whole of his narrative, and the whole of his manner, we see I think indications of great animosity and prejudice. If the whole of this transaction were to be recited by a friendly, or a candid witness, I do not believe it would strike any body as extraordinary. Any mode of telling this story which shall confine the narrative to the essential facts, will leave it, in my humble opinion, if not a strictly proper, yet by no means an illegal or impeachable transaction. Let it be remembered that a great part of his story is such, as cannot be contradicted, though it be false, in as much as it relates to alleged conversations between him and the Respondent when nobody else was present. Wherever the means naturally exist of contradicting or qualifying his testimony, there it is accomplished. Whatever circumstance can be found bearing on it, shows that it is in a greater or less degree incorrect. For example, Ware would represent that it was an important part of this arrangement to keep the payment of the fee from the knowledge of the overseers. This was the reason why the charge was to be inserted in the existing account, by interlineation. Yet the evidence is, that a complete copy of this very *interlined* account was carried home by *Ware*, where the overseers could see it, and would of course perceive exactly what had been done. This is utterly inconsistent with any purpose of secrecy or concealment.

Making just and reasonable allowances, for the considerations which I have mentioned, I ask, is any case *proved*, by the rules of law, against the Respondent? And further, sir, taking the facts only which are satisfactorily established, and supposing the Respondent's conduct to have been wrong, is it clearly shown to have been intentionally wrong? If he ought not to have given the advice, is it anything more than an error of judgment? Can this Court have so little charity for human nature, as to believe that a man of respectable standing could act *corruptly* for so paltry an object? Even although they should judge his conduct improper, do they believe it to have originated in corrupt motives? For my own part, sir, notwithstanding all that prejudices and prepossessions may have done, and all that the most extraordinary manner of presenting this charge may have done, I will not believe, till the annunciation of its judgment shall compel me, that this Court will ever convict the Respondent upon this article.

I now beg leave to call the attention of the Court to one or two considerations of a general nature, and which appear to me to have

an important bearing on the merits of this whole cause.—The first is this, that from the day when the Respondent was appointed Judge of Probate, down to the period at which these articles of impeachment close—from the year 1805 to 1821—there is not a single case, with the exception of that alleged by Ware, in which it is even pretended that any *secrecy* was designed or attempted by the Respondent: there is not a single case, in which he is even accused of having wished to keep anything out of sight, or to conceal any fact in his administration, any charge which he had made, or any fee which he had taken. The evidence, on which you are to judge him, is evidence furnished by himself; and instead of being obliged to seek for testimony in sources beyond the Respondent's control, it is his own avowed actions, his public administration, and the records of his office, which the Managers of the prosecution alone have been able to produce. And yet he is charged with having acted *wilfully* and *corruptly;* as if it were possible that a magistrate, in a high and responsible station, with the eyes of the community upon him, should, for near twenty years, pursue a course of corrupt and wilful maladministration, of which every act and every instance was formally and publicly put on record by himself, and laid open in the face of the community. Is this agreeable to the laws of human nature? Why, sir, if the Respondent has so long been pursuing a course of conscious, and wilful, and corrupt maladministration, why do we discover none of the usual and natural traces of such a course—some attempt at concealment, some effort at secrecy; and in all the numberless cases, in which he had opportunity and temptation, why is not even a suspicion thrown out, that he has attempted to draw a veil of privacy over his alleged *extortions*?—Is it in reason that you should be obliged to go to his own records for the proof of his pretended crimes? And can you, with even the color of probability, appeal to a course of actions unsuspiciously performed in the face of Heaven, to support an accusation of offences in their very nature private, concealed, and hidden?

Another consideration of a general nature to which I earnestly ask the attention of this Hon. Court, is this, that after all these accusations, which have been brought together against the Respondent, in all these articles of impeachment, and with all the industry and zeal, with which the matter of them has been furnished to the Hon. Managers, he is not accused nor was suspected of the crime, most likely to bring an unjust judge to the bar of this Court. Show me the unjust judgment he has rendered, the illegal order he has given, the corrupt decree he has uttered, the act of oppression he has committed. What, sir, a magistrate, charged with a long and deliberate perseverance in wilful and corrupt administration, accused of extortion, thought capable of accepting the miserable bribe of a few cents or a few dollars, for illegal and unconstitutional acts—and that, too, in an office, presenting every day the most abundant opportunities, and if the Respondent were of the character pretended, the most irresistible temptation to acts of lucrative injustice; and yet, not one instance of a corrupt, illegal, or oppressive judgment! I do ask the permission of this Hon. Court and of every member of it, to put this

to his own conscience. I will ask him, if he can now name a more able and upright magistrate, as shown in all his proceedings and judgments, in all the offices of probate in the State? One whose records are more regularly and properly kept, whose administration is more prompt, correct, and legal,—whose competency to the duties is more complete, whose discharge of them is more punctual? I put this earnestly, sir, to the conscience of every member of this Hon. Court. I appeal more especially to my honorable friend, (*Mr. Fay*) entrusted with a share of the management of this prosecution, and who has been for twenty years an inhabitant of the county of Middlesex. I will appeal to him, sir, and I will ask him, whether if he knew, that this night his wife should be left husbandless and his children fatherless, there is a magistrate in the State, in whose protection he had rather they should be left, than in that of the Respondent? Forgetting, for a moment, that he is a prosecutor, and remembering only that he is a citizen of the same county, a member of the same profession, with an acquaintance of twenty years standing, I ask him if he will say that he believes there is a county in the State, in which the office of Judge of Probate has been better administered for twenty years, than it has been in the county of Middlesex by this Respondent. And yet, sir, you are asked to disgrace him. You are asked to fix on him the stigma of a corrupt and unjust judge, and condemn him to wear it through life.

Mr. President, the case is closed! The fate of the Respondent is in your hands. It is for you now to say, whether, from the law and the facts as they have appeared before you, you will proceed to disgrace and disfranchise him. If your duty calls on you to convict him, convict him, and let justice be done! but I adjure you let it be a clear undoubted case. Let it be so for his sake, for you are robbing him of that, for which with all your high powers, you can yield him no compensation; let it be so for your own sakes, for the responsibility of this day's judgment is one, which you must carry with you through your life. For myself, I am willing here to relinquish the character of an advocate, and to express opinions by which I am willing to be bound, as a citizen of the community. And I say upon my honor and conscience, that I see not how, with the law and constitution for your guides, you can pronounce the Respondent guilty. I declare, that I have seen no case of wilful and corrupt official misconduct, set forth according to the requisition of the constitution, and proved according to the common rules of evidence. I *see* many things imprudent and ill judged; many things that I could wish had been otherwise; but corruption and crime I do not see. Sir, the prejudices of the day will soon be forgotten; the passions, if any there be, which have excited or favored this prosecution, will subside; but the consequence of the judgment you are about to render will outlive both them and you. The Respondent is now brought, a single unprotected individual, to this formidable bar of judgment, to stand against the power and authority of the State. I know you can crush him, as he stands before you, and clothed as you are with the sovereignty of the State. You have the power "to change his countenance, and to send him away."—Nor do I remind

you that your judgment is to be rejudged by the community; and as you have summoned him for trial to this high tribunal, you are soon to descend yourselves from these seats of justice, and stand before the higher tribunal of the world. I would not fail so much in respect to this Hon. Court, as to hint that it could pronounce a sentence, which the community will reverse. No sir, it is not the world's revision, which I would call on you to regard; but that of your own consciences when years have gone by, and you shall look back on the sentence you are about to render. If you send away the Respondent, condemned and sentenced, from your bar, you are yet to meet him in the world, on which you cast him out.—You will be called to behold him a disgrace to his family, a sorrow and a shame to his children, a living fountain of grief and agony to himself.

If you shall then be able to behold him only as an unjust judge, whom vengeance has overtaken, and justice has blasted, you will be able to look upon him, not without pity, but yet without remorse. But, if, on the other hand, you shall see, whenever and wherever you meet him, a victim of prejudice or of passion, a sacrifice to a transient excitement; if you shall see in him, a man, for whose condemnation any provision of the constitution has been violated, or any principle of law broken down; then will he be able—humble and low as may be his condition—then will he be able to turn the current of compassion backward, and to look with pity on those who have been his judges. If you are about to visit this Respondent with a judgment which shall blast his house; if the bosoms of the innocent and the amiable are to be made to bleed, under your infliction, I beseech you to be able to state clear and strong grounds for your proceeding. Prejudice and excitement are transitory, and will pass away. Political expediency, in matters of judicature, is false and hollow principle, and will never satisfy the conscience of him who is fearful that he may have given a hasty judgment. I earnestly entreat you, for your own sakes, to possess yourselves of solid reasons, founded in truth and justice, for the judgment you pronounce, which you can carry with you, till you go down into your graves; reasons, which it will require no argument to revive, no sophistry, no excitement, no regard to popular favor, to render satisfactory to your consciences; reasons which you can appeal to, in every crisis of your lives, and which shall be able to assure you, in your own great extremity, that you have not judged a fellow creature without mercy.

Sir, I have done with the case of this individual, and now leave him in your hands. But I would yet once more appeal to you as public men; as statesmen; as men of enlightened minds, capable of a large view of things, and of foreseeing the remote consequences of important transactions; and, as such, I would most earnestly implore you to consider fully of the judgment you may pronounce. You are about to give a construction to constitutional provisions, which may adhere to that instrument for ages, either for good or evil. I may perhaps overrate the importance of this occasion to the public welfare; but I confess it does appear to me that if this

body give its sanction to some of the principles which have been advanced on this occasion, then there is a power in the State above the constitution and the law; a power essentially arbitrary and concentrated, the exercise of which may be most dangerous. If impeachment be not under the rule of the constitution and the laws, then may we tremble, not only for those who may be impeached, but for all others. If the full benefit of every constitutional provision be not extended to the Respondent, his case becomes the case of all the people of the Commonwealth. The constitution is their constitution. They have made it for their own protection, and for his among the rest. They are not eager for his conviction. They are not thirsting for his blood. If he be condemned, without having his offences set forth, in the manner which they, by their constitution have prescribed; and proved, in the manner which they, by their laws have ordained, then not only is he condemned unjustly, but the rights of the whole people disregarded. For the sake of the people themselves, therefore, I would resist all attempts to convict by straining the laws, or getting over their prohibitions.—I hold up before him the broad shield of the constitution; if through that he be pierced and fall, he will be but one sufferer, in a common catastrophe.

ARGUMENT

IN THE CASE OF GIBBONS *vs.* OGDEN, IN THE SUPREME COURT OF THE UNITED STATES, FEBRUARY TERM, 1824.

THIS was an appeal from the Court for the Trial of Impeachments and Correction of Errors of the State of New York. Aaron Ogden filed his bill in the Court of Chancery of that State, against Thomas Gibbons, setting forth the several acts of the Legislature thereof, enacted for the purpose of securing to Robert R. Livingston and Robert Fulton, the exclusive navigation of all the waters within the jurisdiction of that State, with boats moved by fire or steam, for a term of years which has not yet expired; and authorising the Chancellor to award an injunction, restraining any person whatever from navigating those waters with boats of that description. The bill stated an assignment from Livingston and Fulton to one John R. Livingston, and from him to the complainant, Ogden, of the right to navigate the waters between Elizabethtown, and other places in New Jersey, and the city of New York; and that Gibbons, the defendant below, was in possession of two steam boats, called the Stoudinger and the Bellona, which were actually employed in running between New York and Elizabethtown, in violation of the exclusive privilege conferred on the complainant, and praying an injunction to restrain the said Gibbons from using the said boats, or any other propelled by fire or steam, in navigating the waters within the territory of New York. The injunction having been awarded, the answer of Gibbons was filed, in which he stated, that the boats employed by him were duly enrolled and licensed, to be employed in carrying on the coasting trade, under the act of Congress, passed the 18th of February, 1793, c. 8. entitled, "An act for enrolling and licensing ships and vessels to be employed in the coasting trade and fisheries, and for regulating the same." And the defendant insisted on his right, in virtue of such licenses, to navigate the waters between Elizabethtown and the city of New York, the said acts of the Legislature of the State of New York to the contrary notwithstanding. At the hearing, the Chancellor perpetuated the injunction, being of the opinion, that the said acts were not repugnant to the constitution and laws of the United States, and were valid. This decree was affirmed in the Court for the Trial of Impeachments and Correction of Errors, which is the highest Court of law and equity in the State, before which the cause could be carried, and it was thereupon brought to this Court by appeal.

MR. WEBSTER, for the appellant, admitted, that there was a very respectable weight of authority in favor of the decision, which was sought to be reversed. The laws in question, he knew, had been deliberately re-enacted by the Legislature of New York; and they had also received the sanction, at different times, of all her judicial tribunals, than which there were few, if any, in the country, more justly entitled to respect and deference. The disposition of the Court would be, undoubtedly, to support, if it could, laws so passed and so sanctioned. He admitted, therefore, that it was justly expected of him that he should make out a clear case; and unless he did so, he did not hope for a reversal. It should be remembered, how-

ever, that the whole of this branch of power, as exercised by this Court, was a power of revision. The question must be decided by the State Courts, and decided in a particular manner, before it could be brought here at all. Such decisions alone gave the Court jurisdiction; and therefore, while they are to be respected as the judgments of learned judges, they are yet in the condition of all decisions from which the law allows an appeal.

It would not be a waste of time to advert to the existing state of the *facts* connected with the subject of this litigation. The use of steam boats, on the coasts, and in the bays and rivers of the country, had become very general. The intercourse of its different parts essentially depended upon this mode of conveyance and transportation. Rivers and bays, in many cases, form the divisions between States; and thence it was obvious, that if the States should make regulations for the navigation of these waters, and such regulations should be repugnant and hostile, embarrassment would necessarily happen to the general intercourse of the community. Such events had actually occurred, and had created the existing state of things.

By the law of New York, no one can navigate the bay of New York, the North River, the Sound, the lakes, or any of the waters of that State, by steam vessels, *without a license from the grantees of New York*, under penalty of forfeiture of the vessel.

By the law of the neighbouring State of Connecticut, no one can enter her waters with a steam vessel *having such license*.

By the law of New Jersey, if any citizen of that State shall be *restrained*, under the New York law, from using steam boats between the ancient shores of New Jersey and New York, he shall be entitled to an action for damages, *in New Jersey*, with treble costs against the party who thus restrains or impedes him *under the law of New York!* This act of New Jersey is called an act of *retortion* against the illegal and oppressive legislation of New York; and seems to be defended on those grounds of public law which justify *reprisals* between independent States.

It would hardly be contended, that *all* these acts were consistent with the laws and constitution of the United States. If there were no power in the general government, to control this extreme belligerent legislation of the States, the powers of the government were essentially deficient, in a most important and interesting particular. The present controversy respected the earliest of these State laws, those of New York. On those, this Court was now to pronounce; and if they should be declared to be valid and operative, he hoped somebody would point out *where* the State right stopped, and on what grounds the acts of other States were to be held inoperative and void.

It would be necessary to advert more particularly to the laws of New York, as they were stated in the record. The first was passed March 19th, 1787. By this act, a sole and exclusive right was granted to *John Fitch*, of making and using every kind of boat or vessel impelled by steam, in all creeks, rivers, bays, and waters, within the territory and jurisdiction of New York, for fourteen years.

On the 27th of March, 1798, an act was passed, on the sugges tion that Fitch was dead, or had withdrawn from the State, without

having made any attempt to use his privilege, repealing the grant to him, and conferring similar privileges on *Robert R. Livingston*, for the term of twenty years, on a suggestion, made by him, *that he was possessor of a mode of applying the steam engine to propel a boat, on new and advantageous principles.* On the 5th of April, 1803, another act was passed, by which it was declared, that the rights and privileges granted to *R. R. Livingston*, by the last act, should be extended to him and *Robert Fulton, for twenty years, from the passing of this act.* Then there is the act of April 11, 1808, purporting to extend the monopoly, in point of time, five years for every additional boat, the whole duration, however, not to exceed thirty years; and forbidding any and all persons to navigate the waters of the State, with any steam boat or vessel, without the license of *Livingston and Fulton*, under penalty of forfeiture of the boat or vessel. And, lastly, comes the act of April 9, 1811, for enforcing the provisions of the last mentioned act, and declaring, that the forfeiture of the boat or vessel, found navigating against the provisions of the previous acts, shall be deemed to accrue on the day on which such boat or vessel should navigate the waters of the State; and that *Livingston and Fulton* might immediately have an action for such boat or vessel, in like manner as if they themselves had been dispossessed thereof by force; and that on bringing any such suit, the defendant therein should be prohibited, by injunction, from removing the boat or vessel out of the State, or using it within the State. There were one or two other acts mentioned in the pleadings, which principally respected the time allowed for complying with the condition of the grant, and were not material to the discussion of the case.

By these acts, then, an exclusive right is given to *Livingston and Fulton*, to use *steam navigation* on all the waters of New York, for thirty years from 1808.

It is not necessary to recite the several conveyances and agreements, stated in the record, by which *Ogden*, the plaintiff below, derives title under *Livingston and Fulton*, to the exclusive use of part of these waters.

The appellant being owner of a steam boat, and being found navigating the waters between New Jersey and the city of New York, over which waters *Ogden*, the plaintiff below, claimed an exclusive right, under *Livingston and Fulton*, this bill was filed against him by *Ogden*, in October, 1818, and an injunction granted, restraining him from such use of his boat. This injunction was made perpetual, on the final hearing of the cause, in the Court of Chancery; and the decree of the Chancellor has been duly affirmed in the Court of Errors. The right, therefore, which the plaintiff below asserts to have and maintain his injunction, depends obviously on the general validity of the New York laws, and, especially, on their force and operation as against the right set up by the defendant. This right he states, in his answer, to be, that he is a citizen of New Jersey, and owner of the steam boat in question; that the boat was a *vessel* of more than twenty tons burden, *duly enrolled and licensed for carrying on the coasting trade*, and intended to be employed by him, in that trade, between Elizabethtown, in New Jersey, and the city of New York; and was actually employed in navigating between those

places, at the time of, and until notice of the injunction from the Court of Chancery was served on him.

On these pleadings the substantial question is raised: Are these laws such as the Legislature of New York had a right to pass? If so, do they, secondly, in their operation, interfere with any right enjoyed under the constitution and laws of the United States, and are they, therefore, void, as far as such interference extends?

It may be well to state again their general purport and effect, and the purport and effect of the other State laws, which have been enacted by way of retaliation.

A steam vessel, of any description, going to New York, is forfeited to the representatives of *Livingston and Fulton, unless she have their license.*

Going from New York, or elsewhere, to Connecticut, she is prohibited from entering the waters of that State, *if she have such license.*

If the representatives of *Livingston and Fulton, in New York,* carry into effect, by judicial process, the provision of the New York laws, against any citizen of New Jersey, they expose themselves to a statute action, *in New Jersey*, for all damages, and treble costs.

The New York laws extend to all steam vessels; to steam frigates, steam ferry-boats, and all intermediate classes

They extend to public as well as private ships; and to vessels employed in foreign commerce, as well as to those employed in the coasting trade.

The remedy is as summary as the grant itself is ample; for immediate confiscation, without seizure, trial, or judgment, is the penalty of infringement.

In regard to these acts, he should contend, in the first place, that they exceeded the power of the Legislature; and, secondly, that if they could be considered valid, for any purpose, they were void, still, as against any right enjoyed under the laws of the United States, with which they came in collision; and that, in this case, they were found interfering with such rights.

He should contend, that the power of Congress to regulate commerce, was complete and entire, and, to a certain extent, necessarily exclusive; that the acts in question were regulations of commerce, in a most important particular; and affecting it in those respects, in which it was under the exclusive authority of Congress. He stated this first proposition guardedly. He did not mean to say that *all* regulations which might, in their operation, affect commerce, were exclusively in the power of Congress; but that *such power* as had been exercised in this case, did not remain with the States. Nothing was more complex than commerce; and in such an age as this, no words embraced a wider field than *commercial regulation.* Almost all the business and intercourse of life may be connected, incidentally, more or less, with *commercial regulations.* But it was only necessary to apply to this part of the constitution the well settled rules of construction. Some powers are holden to be exclusive in Congress, from the use of exclusive words in the grant; others, from the prohibitions on the States to exercise similar powers; and others, again, from the nature of the powers themselves. It has been by this mode of reasoning that the Court has adjudicated on many im-

portant questions; and the same mode is proper here. And, as some powers have been holden exclusive, and others not so, under the same form of expression, from the nature of the different powers respectively; so, where the power, on any one subject, is given in general words, like the power to regulate commerce, the true method of construction would be, to consider of what parts the grant is composed, and which of those, from the nature of the thing, ought to be considered exclusive. The right set up in this case, under the laws of New York, is a *monopoly*. Now, he thought it very reasonable to say, that the constitution never intended to leave with the States the power of granting monopolies, either of trade or of navigation; and, therefore, that as to this, the commercial power was exclusive in Congress.

It was in vain to look for a precise and exact *definition* of the powers of Congress, on several subjects. The constitution did not undertake the task of making such exact definitions. In conferring powers, it proceeded in the way of *enumeration*, stating the powers conferred, one after another, in few words; and, where the power was general, or complex in its nature, the extent of the grant must necessarily be judged of, and limited, by its object, and by the nature of the power.

Few things were better known, than the immediate causes which led to the adoption of the present constitution; and he thought nothing clearer, than that the prevailing motive was *to regulate commerce;* to rescue it from the embarrassing and destructive consequences, resulting from the legislation of so many different States, and to place it under the protection of a uniform law. The great objects were commerce and revenue; and they were objects indissolubly connected. By the confederation, divers restrictions had been imposed on the States; but these had not been found sufficient. No State, it was true, could send or receive an embassy; nor make any treaty; nor enter into any compact with another State, or with a foreign power; nor lay duties, interfering with treaties which had been entered into by Congress. But all these were found to be far short of what the actual condition of the country required. The States could still, each for itself, regulate commerce, and the consequence was, a perpetual jarring and hostility of commercial regulation.

In the history of the times, it was accordingly found, that the great topic, urged on all occasions, as showing the necessity of a new and different government, was the state of trade and commerce. To benefit and improve these, was a great object in itself; and it became greater when it was regarded as the only means of enabling the country to pay the public debt, and to do justice to those who had most effectually labored for its independence. The leading state papers of the time are full of this topic. The New Jersey resolutions* complain, that the regulation of trade was in the power of the several States, within their separate jurisdiction, in such a degree as to involve many difficulties and embarrassments; and they express an earnest opinion, that *the sole and exclusive power* of regulating trade with foreign States, ought to be in Congress. Mr. Witherspoon's motion in Congress, in 1781, is of the same general

* 1 Laws U. S. p 28.

character; and the report of a committee of that body, in 1785, is still more emphatic. It declares that Congress ought to possess the *sole and exclusive* power of regulating trade, as well with foreign nations, as between the States.* The resolutions of Virginia, in January, 1786, which were the immediate cause of the convention, put forth this same great object. Indeed, it is the *only* object stated in those resolutions. There is not another idea in the whole document. The entire purpose for which the delegates assembled at Annapolis, was to devise means for the uniform regulation of trade. They found no means, but in a general government; and they recommended a convention to accomplish that purpose. Over whatever other interests of the country this government may diffuse its benefits, and its blessings, it will always be true, as matter of historical fact, that it had its immediate origin in the necessities of commerce; and, for its immediate object, the relief of those necessities, by removing their causes, and by establishing a *uniform* and steady system. It would be easy to show, by reference to the discussions in the several State conventions, the prevalence of the same general topics; and if any one would look to the proceedings of several of the States, especially to those of Massachusetts and New York, he would see, very plainly, by the recorded lists of votes, that wherever this commercial necessity was most strongly felt, there the proposed new constitution had most friends. In the New York convention, the argument arising from this consideration was strongly pressed, by the distinguished person whose name is connected with the present question.

We do not find, in the history of the formation and adoption of the constitution, that any man speaks of a general *concurrent power*, in the regulation of foreign and domestic trade, as still residing in the States. The very object intended, more than any other, was to take away such power. If it had not so provided, the constitution would not have been worth accepting.

He contended, therefore, that the people intended, in establishing the constitution, to transfer, from the several States to a general government, those high and important powers over commerce, which, in their exercise, were to maintain an uniform and general system. From the very nature of the case, these powers must be *exclusive;* that is, the higher branches of commercial regulation must be exclusively committed to a single hand. What is it that is to be regulated? Not the commerce of the several States, respectively, but the commerce of the United States. Henceforth, the commerce of the States was to be an *unit;* and the system by which it was to exist and be governed, must necessarily be complete, entire, and uniform. Its character was to be described in the flag which waved over it, E PLURIBUS UNUM. Now, how could individual States assert a right of concurrent legislation, in a case of this sort, without manifest encroachment and confusion? It should be repeated, that the words used in the constitution, "to regulate commerce," are so very general and extensive, that they might be construed to cover a vast field of legislation, part of which has always been occupied by State laws; and, therefore, the words must have a reasonable construction,

* 1 Laws U. S. p. 50.

and the power should be considered as exclusively vested in Congress, so far, and so far only, as the nature of the power requires. And he insisted, that the nature of the case, and of the power, did imperiously require, that such important authority as that of granting monopolies of trade and navigation, should not be considered as still retained by the States.

It is apparent, from the prohibitions on the power of the States, that the *general* concurrent power was not supposed to be left with them. And the exception, out of these prohibitions, of the *inspection laws*, proves this still more clearly. Which most concerns the commerce of this country, that New York and Virginia should have an uncontrolled power to establish their inspection for flour and tobacco, or that they should have an uncontrolled power of granting either a monopoly of trade in their own ports, or a monopoly of navigation over all the waters leading to those ports? Yet, the argument on the other side must be, that, although the constitution has sedulously guarded and limited the first of these powers, it has left the last wholly unlimited and uncontrolled.

But, although much had been said, in the discussion on former occasions, about this supposed *concurrent* power in the States, he found great difficulty in understanding what was meant by it. It was generally qualified, by saying, that it was a power, by which the States could pass laws on the subjects of commercial regulation, which would be valid, until Congress should pass other laws controlling them, or inconsistent with them, and that *then* the State laws must yield. What sort of *concurrent* powers were these, which could not exist together? Indeed, the very reading of the clause in the constitution must put to flight this notion of a general concurrent power. The constitution was formed for all the States; and Congress was to have power to regulate commerce. Now, what is the import of this, but that Congress is to give the rule—to establish the system—to exercise the control over the subject? And, can more than one power, in cases of this sort, give the rule, establish the system, or exercise the control? As it is not contended that the power of Congress is to be exercised by a *supervision* of State legislation; and, as it is clear, that Congress is to give the general rule, he contended, that this power of giving the general rule was transferred, by the constitution, from the States to Congress, to be exercised as that body might see fit. And, consequently, that all those high exercises of power, which might be considered as giving the rule, or establishing the system, in regard to great commercial interests, were necessarily left with Congress alone. Of this character he considered monopolies of trade or navigation; embargoes; the system of navigation laws; the countervailing laws, as against foreign states; and other important enactments respecting our connexion with such states. It appeared to him a most reasonable construction, to say, that in these respects, the power of Congress is exclusive, from the nature of the power. If it be not so, where is the limit, or who shall fix a boundary for the exercise of the power of the States? Can a State grant a monopoly of trade? Can New York shut her ports to all but her own citizens? Can she refuse admission to ships of particular nations? The argument on the other

side is, and must be, that she might do all these things, until Congress should revoke her enactments. And this is called *concurrent* legislation. What confusion such notions lead to, is obvious enough. A power in the States to do anything, and everything, in regard to commerce, till Congress shall undo it, would suppose a state of things, at least as bad as that which existed before the present constitution. It is the true wisdom of these governments to keep their action as distinct as possible. The general government should not seek to operate where the States can operate with more advantage to the community; nor should the States encroach on ground, which the public good, as well as the constitution, refers to the exclusive control of Congress.

If the present state of things—these laws of New York, the laws of Connecticut, and the laws of New Jersey, had been all presented, in the convention of New York, to the eminent person whose name is on this record, and who acted, on that occasion, so important a part; if he had been told, that, after all he had said in favor of the new government, and of its salutary effects on commercial regulations, the time should yet come, when the North River would be shut up by a monopoly from New York; the Sound interdicted by a penal law of Connecticut; *reprisals* authorised by New Jersey, against citizens of New York; and when one could not cross a ferry, without transhipment; does any one suppose he would have admitted all this, as compatible with the government which he was recommending?

This doctrine of a *general* concurrent power in the States, is insidious and dangerous. If it be admitted, no one can say where it will stop. The States may legislate, it is said, wherever Congress has not made a *plenary* exercise of its power. But who is to judge whether Congress has made this *plenary* exercise of power? Congress has acted on this power; it has done all that it deemed wise; and are the States now to do whatever Congress has left undone? Congress makes such rules as, in its judgment, the case requires; and those rules, whatever they are, constitute the *system*.

All useful regulation does not consist in restraint; and that which Congress sees fit to leave free, is a part of its regulation, as much as the rest.

He thought the practice under the constitution sufficiently evinced, that this portion of the commercial power was exclusive in Congress. When, before this instance, have the States granted monopolies? When, until now, have they interfered with the navigation of the country? The pilot laws, the health laws, or quarantine laws, and various regulations of that class, which have been recognised by Congress, are no arguments to prove, even if they are to be called commercial regulations, (which they are not,) that other regulations, more directly and strictly commercial, are not solely within the power of Congress. There was a singular fallacy, as he humbly ventured to think, in the argument of very learned and most respectable persons, on this subject. That argument alleges, that the States have a concurrent power with Congress, of regulating commerce; and its proof of this position is, that the States have, without any question of their right, passed acts respecting turnpike

roads, toll bridges, and ferries. These are declared to be acts of commercial regulation, affecting not only the interior commerce of the State itself, but also commerce between different States. Therefore, as all these are *commercial regulations*, and are yet acknowledged to be rightfully established by the States, it follows, as is supposed, that the States must have a concurrent power to regulate commerce.

Now, what was the inevitable consequence of this mode of reasoning? Does it not admit the power of Congress, at once, upon all these minor objects of legislation? If all these be regulations of commerce, within the meaning of the constitution, then, certainly, Congress having a concurrent power to regulate commerce, may establish ferries, turnpikes, bridges, &c. and provide for all this detail of interior legislation. To sustain the interference of the State, in a high concern of maritime commerce, the argument adopts a principle which acknowledges the right of Congress, over a vast scope of internal legislation, which no one has heretofore supposed to be within its powers. But this is not all; for it is admitted, that when Congress and the States have power to legislate over the same subject, the power of Congress, when exercised, controls or extinguishes the State power; and, therefore, the consequence would seem to follow, from the argument, that all State legislation, over such subjects as have been mentioned, is, at all times, liable to the superior power of Congress; a consequence, which no one would admit for a moment. The truth was, he thought, that all these things were, in their general character, rather regulations of police than of commerce, in the constitutional understanding of that term. A road, indeed, might be a matter of great commercial concern. In many cases it is so; and when it is so, he thought there was no doubt of the power of Congress to make it. But, generally speaking, roads, and bridges, and ferries, though, of course, they affect commerce and intercourse, do not obtain that importance and elevation, as to be deemed *commercial regulations*. A reasonable construction must be given to the constitution; and such construction is as necessary to the just power of the States, as to the authority of Congress. Quarantine laws, for example, may be considered as affecting commerce; yet they are, in their nature, *health laws*. In England, we speak of the power of regulating commerce, as in Parliament, or the King, as arbiter of commerce; yet the city of London enacts health laws. Would any one infer from that circumstance, that the city of London had concurrent power with Parliament or the Crown to *regulate commerce?* or, that it might grant a monoply of the navigation of the Thames? While a health law is reasonable, it is a health law; but if, under color of it, enactments should be made for other purposes, such enactments might be void.

In the discussion in the New York Courts, no small reliance was placed on the law of that State prohibiting the importation of slaves, as an example of a commercial regulation, enacted by State authority. That law may or may not be constitutional and valid. It has been referred to generally, but its particular provisions have not been stated. When they are more clearly seen, its character may be better determined.

It might further be argued, that the power of Congress over these high branches of commerce was exclusive, from the consideration that Congress possessed an exclusive admiralty jurisdiction. That it did possess such exclusive jurisdiction, would hardly be contested. No State pretended to exercise any jurisdiction of that kind. The States had abolished their Courts of Admiralty, when the constitution went into operation. Over these waters, therefore, or, at least, some of them, which are the subject of this monoply, New York has no jurisdiction whatever. They are a part of the high sea, and not within the body of any county. The authorities of that State could not punish for a murder, committed on board one of these boats, in some places within the range of this exclusive grant. This restraining of the States from all jurisdiction, out of the bodies of their own counties, shows plainly enough, that navigation on the high seas, was understood to be a matter to be regulated only by Congress. It is not unreasonable to say, that what are called the waters of New York, are, to purposes of navigation and commercial regulation, the waters of the United States. There is no cession, indeed, of the waters themselves, but their *use*, for those purposes, seemed to be entrusted to the exclusive power of Congress. Several States have enacted laws, which would appear to imply their conviction of the power of Congress, over navigable waters, to a greater extent.

If there be a concurrent power of regulating commerce on the high seas, there must be a concurrent admiralty jurisdiction, and a concurrent control of the waters. It is a common principle, that arms of the sea, including navigable rivers, belong to the sovereign, *so far as navigation is concerned.* Their *use* is navigation. The United States possess the general power over navigation, and, of course, ought to control, in general, the use of navigable waters. If it be admitted, that *for purposes of trade and navigation*, the North River, and its bay, are the river and bay of New York, and the Chesapeake the bay of Virginia, very great inconveniences and much confusion might be the result.

It might now be well to take a nearer view of these laws, to see more exactly what their provisions were, what consequences have followed from them, and what would and might follow from other similar laws.

The first grant to *John Fitch*, gave him the sole and exclusive right of making, employing, and navigating, all boats impelled by fire or steam, "*in all creeks, rivers, bays, and waters, within the territory and jurisdiction of the State.*" Any other person, navigating such boat, was to forfeit it, and to pay a penalty of a hundred pounds. The subsequent acts repeal this, and grant similar privileges to *Livingston and Fulton:* and the act of 1811 provides the extraordinary and summary *remedy*, which has been already stated. The river, the bay, and the marine league along the shore, are all within the scope of this grant. Any vessel, therefore, of this description, coming into any of those waters, without a license, whether from another State, or from abroad, whether it be a public or private vessel, is instantly forfeited to the grantees of the monopoly.

Now, it must be remembered, that this grant is made as an exercise of *sovereign political power*. It is not an inspection law, nor a health law, nor passed by any derivative authority; it is professedly an act of sovereign power. Of course, there is no limit to the power, to be derived from the *purpose* for which it is exercised. If exercised for one purpose, it may be also for another. No one can inquire into the *motives* which influence sovereign authority. It is enough, that such power manifests its will. The motive alleged in this case is, to remunerate the grantees for a benefit conferred by them on the public. But there is no necessary connexion between that benefit and this mode of rewarding it; and if the State could grant this monopoly for that purpose, it could also grant it for any other purpose. It could make the grant for money; and so make the monopoly of navigation over those waters a direct source of revenue. When this monopoly shall expire, in 1838, the State may continue it, for any pecuniary consideration which the holders may see fit to offer, and the State to receive.

If the State may grant this monopoly, it may also grant another, for other descriptions of vessels; for instance, for all *sloops*.

If it can grant these exclusive privileges to a few, it may grant them to many; that is, it may grant them to all its own citizens, to the exclusion of everybody else.

But the waters of New York are no more the subject of exclusive grants by that State, than the waters of other States are subjects of such grants by those other States. Virginia may well exercise, over the entrance of the Chesapeake, all the power that New York can exercise over the bay of New York, and the waters on the shore. The Chesapeake, therefore, upon the principle of these laws, may be the subject of State monopoly; and so may the bay of Massachusetts. But this is not all. It requires no greater power, to grant a monopoly of *trade*, than a monopoly of navigation. Of course, New York, if these acts can be maintained, may give an exclusive right of entry of vessels into her ports. And the other States may do the same. These are not extreme cases. We have only to suppose that other States should do what New York has already done, and that the power should be carried to its full extent.

To all this, there is no answer to be given except this, that the *concurrent* power of the States, concurrent though it be, is yet *subordinate* to the legislation of Congress; and that, therefore, Congress may, when it pleases, annul the State legislation; but, until it does so annul it, the State legislation is valid and effectual. What is there to recommend a construction which leads to a result like this? Here would be a perpetual hostility; one Legislature enacting laws, till another Legislature should repeal them; one sovereign power giving the rule, till another sovereign power should abrogate it; and all this under the idea of *concurrent* legislation!

But further; under this *concurrent power*, the State does that which Congress cannot do; that is, it gives preferences to the citizens of some States over those of others. I do not mean here the advantages conferred by the grant on the grantees; but the *disadvantages* to which it subjects all the other citizens of New York To impose

an extraordinary tax on steam navigation visiting the ports of New York, and leaving it free everywhere else, is giving a preference to the citizens of other States over those of New York. This Congress could not do; and yet the State does it: so that this power, at first subordinate, then concurrent, now becomes paramount.

The people of New York have a right to be protected against this monopoly. It is one of the objects for which they agreed to this constitution, that they should stand on an equality in commercial regulations; and if the government should not insure them that, the promises made to them, in its behalf, would not be performed.

He contended, therefore, in conclusion on this point, that the power of Congress over these high branches of commercial regulation, was shown to be exclusive, by considering what was wished and intended to be done, when the convention, for forming the constitution, was called; by what was understood, in the State conventions, to have been accomplished by the instrument; by the prohibitions on the States, and the express exception relative to inspection laws; by the nature of the power itself; by the terms used, as connected with the nature of the power; by the subsequent understanding and practice, both of Congress and the States; by the grant of exclusive admiralty jurisdiction to the federal government; by the manifest danger of the opposite doctrine, and the ruinous consequences to which it directly leads.

It required little now to be said, to prove that this exclusive grant is a law regulating commerce; although, in some of the discussions elsewhere, it had been called a law of *police*. If it be not a *regulation of commerce*, then it follows, against the constant admission on the other side, that Congress, even by an express act, could not annul or control it. For if it be not a regulation of commerce, Congress has no concern with it. But the granting of monopolies of this kind is always referred to the power over commerce. It was as arbiter of commerce that the King formerly granted such monopolies.* This is a law regulating commerce, inasmuch as it imposes new conditions and terms on the coasting trade, on foreign trade generally, and on foreign trade as regulated by treaties; and inasmuch as it interferes with the free navigation of navigable waters.

If, then, the power of commercial regulation, possessed by Congress, be, in regard to the great branches of it, exclusive; and if this grant of New York be a commercial regulation, affecting commerce, in respect to these great branches, then the grant is void, whether any case of actual collision had happened or not.

But, he contended, in the second place, that whether the grant were to be regarded as wholly void or not, it must, at least, be inoperative, when the rights claimed under it came in collision with other rights, enjoyed and secured under the laws of the United States; and such collision, he maintained, clearly existed in this case. It would not be denied that the law of Congress was paramount. The constitution has expressly provided for that. So that the only question in this part of the case is, whether the two rights be inconsistent with each other. The appellant had a *right*

* 1 *Bl. Com.* 273. 4 *Bl. Com.* 160.

to go from New Jersey to New York, in a vessel, owned by himself, of the proper legal description, and enrolled and licensed according to law. This *right* belonged to him as a citizen of the United States. It was derived under the laws of the United States, and no act of the Legislature of New York can deprive him of it, any more than such act could deprive him of the right of holding lands in that State, or of suing in its Courts. It appears from the record, that the boat in question was regularly enrolled, at Perth Amboy, and properly licensed for carrying on the coasting trade. Under this enrolment, and with this license, she was proceeding to New York, when she was stopped by the injunction of the Chancellor, on the application of the New York grantees. There can be no doubt that here is a collision, in fact; that which the appellant claimed as a right, the respondent resisted; and there remains nothing now but to determine, whether the appellant had, as he contends, a *right* to navigate these waters; because, if he had such *right*, it must prevail. Now, this right was expressly conferred by the laws of the United States. The first section of the act of February, 1793, c. 8. regulating the coasting trade and fisheries, declares, that all ships and vessels, enrolled and licensed as that act provides, "and no others, shall be deemed ships or vessels of the United States, entitled to the privileges of ships or vessels employed in the coasting trade or fisheries." The fourth section of the same declares, "that in order to the licensing of any ship or vessel, for carrying on the coasting trade or fisheries," bond shall be given, &c. according to the provisions of the act. And the same section declares, that the owner having complied with the requisites of the law, "it shall be the duty of the Collector to grant a license for carrying on the coasting trade;" and the act proceeds to give the form and words of the license, which is, therefore, of course, to be received as a part of the act; and the words of the license, after the necessary recitals, are, "license is hereby granted for the said vessel to be employed in carrying on the coasting trade."

Words could not make this authority more express.

The Court below seemed to him, with great deference, to have mistaken the object and nature of the *license*. It seemed to have been of opinion that the *license* had no other intent or effect than to ascertain the ownership and character of the vessel. But this was the peculiar office and object of the *enrolment*. That document ascertains that the regular proof of ownership and character has been given; and the *license* is given, to confer the *right*, to which the party has shown himself entitled. It is the authority which the master carries with him, to prove his right to navigate freely the waters of the United States, and to carry on the coasting trade.

In some of the discussions which had been had on this question, it had been said, that Congress had only provided for ascertaining the ownership and property of vessels, but had not prescribed to what *use* they might be applied. But this he thought an obvious error; the whole object of the act regulating the coasting trade, was to declare what vessels shall enjoy the benefit *of being used* in the coasting trade. To secure this *use* to certain vessels, and to deny it to others, was precisely the purpose for which the act was passed.

The error, or what he humbly supposed to be the error, in the judgment of the Court below, consisted in that Court's having thought, that although Congress *might act*, it had *not yet acted*, in such a way as to confer a *right* on the appellant: whereas, if a right was not given by this law, it never could be given; no law could be more express. It had been admitted, that supposing there was a provision in the act of Congress, that all vessels duly licensed should be at liberty to navigate, for the purpose of trade and commere, over all the navigable harbours, bays, rivers and lakes, within the several States, any law of the States, creating particular privileges as to any particular class of vessels, to the contrary notwithstanding, the only question that could arise, in such a case, would be, whether the law was constitutional; and that if that was to be granted or decided, it would certainly, in all Courts and places, overrule and set aside the State grant.

Now, he did not see that such supposed case could be distinguished from the present. We show a provision in an act of Congress, that all vessels, duly licensed, may carry on the coasting trade; nobody doubts the constitutional validity of that law; and we show that this vessel was duly licensed according to its provisions. This is all that is *essential* in the case supposed. The presence or absence of a *non obstante* clause, cannot affect the extent or operation of the act of Congress. Congress has no power of revoking State laws, as a distinct power. It legislates over *subjects;* and over those subjects which are within its power, its legislation is supreme, and necessarily overrules all inconsistent or repugnant State legislation. If Congress were to pass an act expressly revoking or annulling, in whole or in part, this New York grant, such an act would be wholly useless and inoperative. If the New York grant be opposed to, or inconsistent with, any constitutional power which Congress has exercised, then, so far as the incompatibility exists, the grant is nugatory and void, necessarily, and by reason of the supremacy of the law of Congress. But if the grant be not inconsistent with any exercise of the powers of Congress, then, certainly, Congress has no authority to revoke or annul it. Such an act of Congress, therefore, would be either unconstitutional or supererogatory. The laws of Congress need no *non obstante* clause. The constitution makes them supreme, when State laws come into opposition to them; so that in these cases there is no question except this, whether there be, or be not, a repugnancy or hostility between the law of Congress and the law of the State. Nor is it at all material, in this view, whether the law of the State be a law regulating commerce, or a law of police, or by whatever other name or character it may be designated. If its provisions be inconsistent with an act of Congress, they are void, so far as that inconsistency extends. The whole argument, therefore, is substantially and effectually given up, when it is admitted, that Congress might, by express terms, abrogate the State grant, or declare that it should not stand in the way of its own legislation; because, such express terms would add nothing to the effect and operation of an act of Congress.

He contended, therefore, upon the whole of this point, that a case of actual collision had been made out, in this case, between the

State grant and the act of Congress; and as the act of Congress was entirely unexceptionable, and clearly in pursuance of its constitutional powers, the State grant must yield.

There were other provisions of the constitution of the United States, which had more or less bearing on this question: "No State shall, without the consent of Congress, lay any duty of tonnage." Under color of grants like this, that prohibition might be wholly evaded. This grant authorises Messrs. Livingston and Fulton *to license* navigation in the waters of New York. They, of course, license it on their own terms. They may require a pecuniary consideration, ascertained by the tonnage of the vessel, or in any other manner. Probably, in fact, they govern themselves, in this respect, by the size or tonnage of the vessels, to which they grant licenses. Now, what is this but substantially a *tonnage* duty, under the law of the State? Or does it make any difference, whether the receipts go directly to her own treasury, or to the hands of those to whom she has made the grant?

There was, lastly, that provision of the constitution which gives Congress power to promote the progress of science and the useful arts, by securing to authors and inventors, for a limited time, an exclusive right to their own writings and discoveries. Congress had exercised this power, and made all the provisions which it deemed useful or necessary. The States might, indeed, like munificent individuals, exercise their own bounty towards authors and inventors, at their own discretion. But to confer reward by exclusive grants, even if it were but a part of the use of the writing or invention, was not supposed to be a power properly to be exercised by the States. Much less could they, under the notion of conferring rewards in such cases, grant monopolies, the enjoyment of which should be essentially incompatible with the exercise of rights holden under the laws of the United States. He should insist, however, the less on these points, as they were open to counsel, who would come after him, on the same side, and as he had said so much upon what appeared to him the more important and interesting part of the argument.

ARGUMENT

IN THE CASE OF OGDEN *vs.* SAUNDERS, IN THE SUPREME COURT OF THE UNITED STATES, JANUARY TERM, 1827.

This was an action of Assumpsit brought originally in the Circuit Court of Louisiana by Saunders, a citizen of Kentucky, against Ogden, a citizen of Louisiana. The plaintiff below declared upon certain bills of exchange, drawn on the 30th of September, 1806, by one Jordan, at Lexington, in the State of Kentucky, upon the defendant below, Ogden, in the city of New York, (the defendant then being a citizen and resident of the State of New York,) accepted by him at the city of New York, and protested for non-payment.

The defendant below pleaded several pleas, among which was a certificate of discharge under the act of the legislature of the State of New York, of April 3d, 1801, for the relief of insolvent debtors, commonly called the *threefourths act.*

The jury found the facts in the form of a special verdict, on which the Court rendered a judgment for the plaintiff below, and the cause was brought by writ of error before this Court. The question, which arose under this plea as to the validity of the law of New York as being repugnant to the constitution of the United States, was argued at February term, 1824, by Mr. *Clay*, Mr. *D. B. Ogden*, and Mr. *Haines*, for the plaintiff in error, and by Mr. *Webster* and Mr. *Wheaton*, for the defendant in error, and the cause was continued for advisement until the present term. It was again argued at the present term, by Mr. *Webster* and Mr. *Wheaton*, against the validity, and by the *Attorney General*, Mr. *E. Livingston*, Mr. *D. B. Ogden*, Mr. *Jones*, and Mr. *Sampson*, for the validity.

Mr. Wheaton opened the argument for the defendant in error; he was followed by the counsel for the plaintiff in error; and Mr. Webster replied as follows:

THE question arising in this case is not more important, nor so important even, in its bearing on individual cases of private right, as in its character of a public political question. The constitution was intended to accomplish a great political object. Its design was not so much to prevent injustice or injury in one case, or in successive single cases, as it was to make general salutary provisions, which, in their operation, should give security to all contracts, stability to credit, uniformity among all the States, in those things which materially concerned the foreign commerce of the country, and their own credit, trade, and intercourse among themselves. The real question is, therefore, a much broader one than has been argued. It is this, whether the constitution has not, for general political purposes, ordained that bankrupt laws should be established only by national authority? We contend that such was the intention of the constitution; an intention, as we think, plainly manifested by a consideration of its several provisions

The act of New York, under which this question arises, provides, that a debtor may be discharged from all his debts, upon assigning his property to trustees for the use of his creditors. When applied to the discharge of debts, contracted before the date of the law, this Court has decided that the act is invalid.* The act itself makes no distinction between past and future debts, but provides for the discharge of both in the same manner. In the case, then, of a debt already existing, it is admitted, that the act does impair the obligation of contracts. We wish the full extent of this decision to be well considered. It is not, merely, that the legislature of the State cannot interfere, by law, in the particular case of A. or B., to injure or impair rights which have become vested under contracts; but it is, that they have no power, by general law, to regulate the manner in which all debtors may be discharged from subsisting contracts; in other words, they cannot pass general bankrupt laws, to be applied *in presenti*. Now, it is not contended that such laws are unjust, and ought not to be passed by any legislature. It is not said they are unwise or impolitic. On the contrary, we know the general experience is, that when bankrupt laws are established, they make no distinction between present and future debts. While all agree that special acts, made for individual cases, are unjust, all admit that a general law, made for all cases, may be both just and politic. The question, then, which meets us in the threshold, is this: if the constitution meant to leave the States the power of establishing systems of bankruptcy to act upon future debts, what great or important object, of a political nature, was answered, by denying the power of making such systems applicable to existing debts?

The argument used in *Sturges* vs. *Crowninshield*, was, at least, a plausible and consistent argument. It maintained, that the prohibition of the constitution was levelled only against interferences in individual cases, and did not apply to general laws, whether those laws were retrospective or prospective in their operation. But the Court rejected that conclusion. It decided, that the constitution was intended to apply to general laws, or systems of bankruptcy; that an act, providing that all debtors might be discharged from all creditors, upon certain conditions, was of no more validity than an act, providing that a particular debtor, A., should be discharged on the same conditions from his particular creditor, B.

It being thus decided that general laws are thus within the prohibition of the constitution, it is for the plaintiff in error now to show, on what ground, consistent with the general objects of the constitution, he can establish a distinction, which can give effect to those general laws in their application to future debts, while it denies them effect in their application to subsisting debts. The words are, that "*no State shall pass any law impairing the obligation of contracts.*" The general operation of all such laws is, to impair that obligation; that is, to discharge the obligation without fulfilling it. This is admitted; and the only ground taken for the distinction to stand on is, that when the law was in existence, at the time of the making the contract, the parties must be supposed to have reference to it, or, as it is usually expressed, the law is made a part of the contract. Be-

* Sturges vs Crowninshield, 4 *Wheat. Rep.* 122.

fore considering what foundation there is for this argument, it may be well to inquire, what is that obligation of contracts of which the constitution speaks, and whence is it derived?

The definition given by the Court in *Sturges* vs. *Crowninshield*, is sufficient for our present purpose. "A contract," say the Court, "is an agreement to do some particular thing; the law binds the party to perform this agreement, and this is the obligation of the contract."

It may, indeed, probably, be correct to suppose the constitution used the words in somewhat of a more popular sense. We speak, for example, familiarly of a usurious contract, and yet we say, speaking technically, that a usurious agreement is no contract.

By the obligation of a contract, we should understand the constitution to mean, the duty of performing a legal agreement. If the contract be lawful, the party is bound to perform it. But bound by what? What is it that binds him? And this leads to what we regard as a principal fallacy in the argument on the other side. That argument supposes, and insists, that the whole obligation of a contract has its origin in the municipal law. This position we controvert. We do not say that it is that obligation which springs from conscience merely; but we deny that it is only such as springs from the particular law of the place where the contract is made. It must be a lawful contract, doubtless; that is, permitted and allowed; because society has a right to prohibit all such contracts, as well as all such actions, as it deems to be mischievous or injurious. But if the contract be such as the law of society tolerates, in other words, if it be lawful, then we say, the duty of performing it springs from universal law. And this is the concurrent sense of all the writers of authority

The duty of performing promises is thus shown to rest on universal law; and if, departing from this well established principle, we now follow the teachers who instruct us that the obligation of a contract has its origin in the law of a particular State, and is, in all cases, what that law makes it, and no more, and no less, we shall probably find ourselves involved in inexplicable difficulties. A man promises, for a valuable consideration, to pay money in New York; is the obligation of that contract created by the laws of that State? or does it subsist independent of those laws? We contend that the obligation of a contract, that is, the duty of performing it, is not created by the law of the particular place where it is made, and dependent on that law for its existence; but that it may subsist, and does subsist, without that law, and independent of it. The obligation is in the contract itself, in the assent of the parties, and in the sanction of universal law. This is the doctrine of *Grotius*, *Vattel*, *Burlemaqui*, *Pothier*, and *Rutherforth*. The contract, doubtless, is necessarily to be enforced by the municipal law of the place where performance is demanded. The municipal law acts on the contract after it is made, to compel its execution, or give damages for its violation. But this is a very different thing from the same law, being the origin or fountain of the contract. Let us illustrate this matter by an example. Two persons contract together in New York for the delivery, by one to the other, of a domestic animal or utensil of husbandry, or a weapon of war. This is a lawful contract, and while the parties remain in

New York, it is to be enforced by the laws of that State. But if they remove with the article to Pennsylvania or Maryland, there a new law comes to act upon the contract, and to apply other remedies if it be broken. Thus far the remedies are furnished by the laws of society. But suppose the same parties to go together to a savage wilderness, or a desert island, beyond the reach of the laws of any society; the obligation of the contract still subsists, and is as perfect as ever, and is now to be enforced by another law, that is, the law of nature, and the party to whom the promise was made, has a right to take by force the animal, the utensil, or the weapon, that was promised to him. The right is as perfect here, as it was in Pennsylvania, or even in New York; but this could not be so if the obligation were created by the law of New York, or were dependent on that law for its existence, because the laws of that State can have no operation beyond its territory. Let us reverse this example. Suppose a contract to be made between two persons cast ashore on an uninhabited territory, or in a place over which no law of society extends. There are such places, and contracts have been made there by individuals casually there, and these contracts have been enforced in Courts of law in civilized communities. Whence do such contracts derive their obligation, if not from universal law?

If these considerations show us that the obligation of a lawful contract does not derive its force from the particular law of the place where made, but may exist where that law does not exist, and be enforced where that law has no validity, then it follows, we contend, that any statute which diminishes or lessens its obligation, does impair it, whether it precedes or succeeds the contract in date. The contract having an independent origin, whenever the law comes to exist together with it, and interferes with it, it lessens, we say, and impairs its own original and independent obligation. In the case before the Court, the contract did not owe its existence to the particular law of New York; it did not depend on that law, but could be enforced without the territory of that State, as well as within it. Nevertheless, though legal, though thus independently existing, though thus binding the party everywhere, and capable of being enforced everywhere, yet, the statute of New York says, that it shall be discharged without payment. This, we say, impairs the obligation of that contract. It is admitted to have been legal in its inception, legal in its full extent, and capable of being enforced by other tribunals according to its terms. An act, then, purporting to discharge it without payment, is, as we contend, an act impairing its obligation.

But here we meet the opposite argument, stated on different occasions in different terms, but usually summed up in this, that the law itself is a part of the contract, and, therefore, cannot impair it. What does this mean? Let us seek for clear ideas. It does not mean that the law gives any particular construction to the terms of the contract, or that it makes the promise, or the consideration, or the time of performance, other than they are expressed in the instrument itself. It can only mean, that it is to be taken as a part of the contract, or understanding of the parties, that the contract itself shall be enforced by such laws and regulations, respecting remedy

and for the enforcement of contracts, as are in being in the State where it is made at the time of entering into it. This is meant, or nothing very clearly intelligible is meant, by saying the law is part of the contract.

There is no authority in adjudged cases, for the plaintiff in error, but the State decisions which have been cited, and, as has already been stated, they all rest on this reason, that the law is part of the contract.

Against this we contend,

1st. That if the proposition were true, the consequence would not follow.

2d. That the proposition itself cannot be maintained.

1. If it were true that the law is to be considered as part of the contract, the consequence contended for would not follow; because, if this statute be part of the contract, so is every other legal or constitutional provision existing at the time which affects the contract, or which is capable of affecting it; and especially this very article of the constitution of the United States is part of the contract. The plaintiff in error argues in a complete circle. He supposes the parties to have had reference to it because it was a binding law, and yet he proves it to be a binding law only upon the ground that such reference was made to it. We come before the Court alleging the law to be void as unconstitutional; they stop the inquiry by opposing to us the law itself. Is this logical? Is it not precisely *objectio ejus, cujus dissolutio petitur?* If one bring a bill to set aside a judgment, is that judgment itself a good plea in bar to the bill? We propose to inquire if this law is of force to control our contract, or whether, by the constitution of the United States, such force be not denied to it. The plaintiff in error stops us by saying that it does control the contract, and so arrives shortly at the end of the debate. Is it not obvious, that supposing the act of New York to be a part of the contract, the question still remains as undecided as ever. What is that act? Is it a *law*, or is it a nullity? A thing of force, or a thing of no force? Suppose the parties to have contemplated this act, what did they contemplate? its words only, or its legal effect? its words, or the force which the constitution of the United States allowed to it? If the parties contemplated any law, they contemplated all the law that bore on their contract, the aggregate of all the statute and constitutional provisions. To suppose that they had in view one statute, without regarding others, or that they contemplated a statute without considering that paramount constitutional provisions might control or qualify that statute, or abrogate it altogether, is unreasonable and inadmissible. "This contract," says one of the authorities relied on, "is to be construed as if the law were specially recited in it." Let it be so for the sake of argument. But it is also to be construed as if the prohibitory clause of the constitution were recited in it, and this brings us back again to the precise point from which we departed.

The constitution always accompanies the law, and the latter can have no force which the former does not allow to it. If the reasoning were thrown into the form of special pleading, it would stand thus: the plaintiff declares on his debt; the defendant pleads his discharge

under the law; the plaintiff alleges the law unconstitutional; but the defendant says, you knew of its existence; to which the answer is obvious and irresistible, I knew its existence on the statute book of New York, but I knew, at the same time, it was null and void under the constitution of the United States.

The language of another leading decision is, "a law in force at the time of making the contract does not violate that contract;" but the very question is, whether there be any such law "*in force;*" for if the States have no authority to pass such laws, then no such law can be in force. The constitution is a part of the contract as much as the law, and was as much in the contemplation of the parties. So that the proposition, if it be admitted, that the law is part of the contract, leaves us just where it found us, that is to say, under the necessity of comparing the law with the constitution, and of deciding by such comparison whether it be valid or invalid. If the law be unconstitutional, it is void, and no party can be supposed to have had reference to a void law. If it be constitutional, no reference to it need be supposed.

2. But the proposition itself cannot be maintained. The law is no part of the contract. What part is it? the promise? the consideration? the condition? Clearly, it is neither of these. It is no term of the contract. It acts upon the contract only when it is broken, or to discharge the party from its obligation after it is broken. The municipal law is the force of society employed to compel the performance of contracts. In every judgment in a suit on contract, the damages are given, and the imprisonment of the person or sale of goods awarded, not in performance of the contract, or as part of the contract, but as an indemnity for the breach of the contract. Even interest, which is a strong case, where it is not expressed in the contract itself, can only be given as damages. It is nearly absurd to say that a man's goods are sold on a *fieri facias*, or that he himself goes to gaol, in pursuance of his contract. These are the penalties which the law inflicts for the breach of his contract. Doubtless, parties, when they enter into contracts, may well consider both what their rights and what their liabilities will be by the law, if such contracts be broken; but this contemplation of consequences which can ensue only when the contract is broken, is no part of the contract itself. The law has nothing to do with the contract till it be broken; how then can it be said to form a part of the contract itself?

But there are other cogent and more specific reasons against considering the law as part of the contract. (1.) If the law be part of the contract, it cannot be repealed or altered; because, in such case, the repealing or modifying law itself would impair the obligation of the contract. The insolvent law of New York, for example, authorises the discharge of a debtor on the consent of two thirds of his creditors. A subsequent act requires the consent of three fourths; but if the existing law be part of the contract, this latter law would be void. In short, whatever is part of the contract cannot be varied but by consent of the parties; therefore the argument runs *in absurdum;* for it proves that no laws for enforcing the contract or giving remedies upon it, or any way affecting it, can be changed or modi-

fied between its creation and its end. If the law in question binds one party on the ground of assent to it, it binds both, and binds them until they agree to terminate its operation. (2.) If the party be bound by an implied assent to the law, as thereby making the law a part of the contract, how would it be if the parties had expressly dissented, and agreed that the law should make no part of the contract? Suppose the promise to have been, that the promiser would pay at all events, and not take advantage of the statute; still, would not the statute operate on the whole, on this particular agreement and all? and does not this show that the law is no part of the contract, but something above it? (3.) If the law of the place be part of the contract, one of its terms and conditions, how could it be enforced, as we all know it might be, in another jurisdiction, which should have no regard to the law of the place? Suppose the parties, after the contract, to remove to another State, do they carry the law with them as part of their contract? We all know they do not. Or take a common case; some States have laws abolishing imprisonment for debt; these laws, according to the argument, are all parts of the contract; how then can the party, when sued in another State, be imprisoned contrary to the terms of his contract? (4.) The argument proves too much, inasmuch as it applies as strongly to prior as to subsequent contracts. It is founded on a supposed assent to the exercise of legislative authority, without considering whether that exercise be legal or illegal. But it is equally fair to found the argument on an implied assent to the potential exercise of that authority. The implied reference to the control of legislative power, is as reasonable and as strong when that power is dormant, as while it is in exercise. In one case, the argument is, "the law existed, you knew it, and acquiesced." In the other, it is, "the power to pass the law existed, you knew it, and took your chance." There is as clear an assent in the one instance as in the other. Indeed, it is more reasonable and more sensible, to imply a general assent to all the laws of society, present and to come, from the fact of living in it, than it is to imply a particular assent to a particular existing enactment. The true view of the matter is, that every man is presumed to submit to all power which may be lawfully exercised over him, or his right, and no one should be presumed to submit to illegal acts of power, whether actual or contingent. (5.) But a main objection to this argument is, that it would render the whole constitutional provision idle and inoperative; and no explanatory words, if such words had been added in the constitution, could have prevented this consequence. The law, it is said, is part of the contract; it cannot, therefore, impair the contract, because a contract cannot impair itself. Now, if this argument be sound, the case would have been the same, whatever words the constitution had used. If, for example, it had declared that no State should pass any law impairing contracts *prospectively* or *retrospectively;* or law impairing contracts, whether existing or future; or whatever terms it had used to prohibit precisely such a law as is now before the Court, the prohibition would be totally nugatory if the law is to be taken as part of the contract; and the result would be, that, whatever may be the laws which the States by this clause of

the constitution are prohibited from passing, yet, if they in fact do pass such laws, those laws are valid, and bind parties by a supposed assent.

But further, this idea, if well founded, would enable the States to defeat the whole constitutional provision by a general enactment. Suppose a State should declare, by law, that all contracts entered into therein, should be subject to such laws as the legislature, at any time, or from time to time, might see fit to pass. This law, according to the argument, would enter into the contract, become a part of it, and authorise the interference of the legislative power with it, for any and all purposes, wholly uncontrolled by the constitution of the United States.

So much for the argument that the law is a part of the contract. We think it is shown to be not so; and, if it were, the expected consequence would not follow.

The inquiry, then, recurs, whether the law in question be such a law as the legislature of New York had authority to pass. The question is general. We differ from our learned adversaries on general principles. We differ as to the main scope and end of this constitutional provision. They think it entirely remedial: we regard it as preventive. They think it adopted to secure redress for violated private rights: to us it seems intended to guard against great public mischiefs. They argue it, as if it were designed as an indemnity or protection for injured private rights, in individual cases of *meum* and *tuum:* we look upon it as a great political provision, favorable to the commerce and credit of the whole country. Certainly we do not deny its application to cases of violated private right. Such cases are clearly and unquestionably within its operation. Still, we think its main scope to be general and political. And this, we think, is proved by reference to the history of the country, and to the great objects which were sought to be obtained by the establishment of the present government. Commerce, credit, and confidence, were the principal things which did not exist under the old confederation, and which it was a main object of the present constitution to create and establish. A vicious system of legislation, a system of paper money and tender laws, had completely paralysed industry, threatened to beggar every man of property, and ultimately to ruin the country. The relation between debtor and creditor, always delicate, and always dangerous whenever it divides society, and draws out the respective parties into different ranks and classes, was in such a condition in the years 1787, '88, and '89, as to threaten the overthrow of all government; and a revolution was menaced, much more critical and alarming than that through which the country had recently passed. The object of the new constitution was to arrest these evils; to awaken industry by giving security to property; to establish confidence, credit, and commerce, by salutary laws, to be enforced by the power of the whole community. The revolutionary war was over, the country had peace, but little domestic tranquillity; liberty, but few of its enjoyments, and none of its security. The States had struggled together, but their union was imperfect. They had freedom, but not an established course of justice. The constitution was therefore framed, as it professes, "to form a more perfect union, to establish justice, to secure the blessings of liberty, and to insure domestic tranquillity."

It is not pertinent to this occasion, to advert to all the means by which these desirable ends were to be obtained. Some of them, closely connected with the subject now under consideration, are obvious and prominent. The objects were, commerce, credit, and mutual confidence in matters of property; and these required, among other things, a uniform standard of value, or medium of payments. One of the first powers given to Congress, therefore, is that of coining money, and fixing the value of foreign coins; and one of the first restraints imposed on the States, is the total prohibition to coin money. These two provisions are industriously followed up and completed, by denying to the States all power emitting of bills of credit, or of making anything but gold and silver a tender in the payment of debts. The whole control, therefore, over the standard of value, and medium of payments, is vested in the general government. And here the question instantly suggests itself, why should such pains be taken to confide in Congress alone this exclusive power of fixing on a standard value, and of prescribing the medium in which debts shall be paid, if it is, after all, to be left to every State to declare that debts may be discharged, and to prescribe how they may be discharged, without any payment at all? Why say that no man shall be obliged to take in discharge of a debt paper money issued by the authority of a State, and yet say, that by the same authority the debt may be discharged without any payment whatever?

We contend, that the constitution has not left its work thus unfinished. We contend, that, taking its provisions together, it is apparent it was intended to provide for two things, intimately connected with each other.

1. A uniform medium for the payment of debts.

2. A uniform manner of discharging debts when they are to be discharged without payment.

The arrangement of the grants and prohibition contained in the constitution, are fit to be regarded on this occasion. The grant to Congress, and the prohibition on the States, though they are certainly to be construed together, are not contained in the same clauses. The powers granted to Congress are enumerated one after another in the eighth section; the principal limitations on those powers, in the ninth section; and the prohibitions to the States, in the tenth section. Now, in order to understand whether any particular power be exclusively vested in Congress, it is necessary to read the terms of the grant, together with the terms of the prohibition. Take an example from that power of which we have been speaking, the coinage power. Here the grant to Congress is, "To coin money, regulate the value thereof, and of foreign coins." Now, the correlative prohibition on the States, though found in another section, is, undoubtedly, to be taken in immediate connexion with the foregoing, as much so as if it had been found in the same clause The only just reading of these provisions, therefore, is this: "*Congress shall have power to coin money, regulate the value thereof, and of foreign coin; but no State shall coin money, emit bills of credit, or make anything but gold and silver coin a tender in payment of debts.*"

These provisions respect the medium of payment, or standard of value, and, thus collated, their joint result is clear and decisive

We think the result clear also, of those provisions which respect the discharge of debts without payment. Collated in like manner, they stand thus: "*Congress shall have power to establish uniform laws on the subject of bankruptcies throughout the United States; but no State shall pass any law impairing the obligation of contracts.*" This collocation cannot be objected to if they refer to the same subject matter; and that they do refer to the same subject matter, we have the authority of this Court for saying, because this Court solemnly determined, in *Sturges* vs. *Crowninshield*, that this prohibition on the States did apply to systems of bankruptcy. It must be now taken, therefore, that State bankrupt laws were in the mind of the Convention when the prohibition was adopted, and, therefore, the grant to Congress on the subject of bankrupt laws, and the prohibition to the State on the same subject, are properly to be taken and read together; and being thus read together, is not the intention clear to take away from the States the power of passing bankrupt laws, since, while enacted by them, such laws would not be uniform, and to confer the power exclusively on Congress, by whom uniform laws could be established?

Suppose the order of arrangement in the constitution had been otherwise than it is, and that the prohibitions to the States had preceded the grants of power to Congress, the two powers, when collated, would then have read thus: "*No State shall pass any law impairing the obligation of contracts; but Congress may establish uniform laws on the subject of bankruptcies.*" Could any man have doubted, in that case, that the meaning was, that the States should not pass laws discharging debts without payment, but that Congress might establish uniform bankrupt acts? and yet this inversion of the order of the clauses does not alter their sense. We contend, that Congress alone possesses the power of establishing bankrupt laws; and although we are aware, that in *Sturges* vs. *Crowninshield*, the Court decided, that such an exclusive power could not be inferred from the words of the grant in the seventh section, we yet would respectfully request the bench to reconsider this point. We think it could not have been intended that both the States and general government should exercise this power; and, therefore, that a grant to one implies the prohibition on the other. But not to press a topic which the Court has already had under its consideration, we contend, that even without reading the clauses of the constitution in the connexion which we have suggested, and which is believed to be the true one, the prohibition in the tenth section, taken by itself, does forbid the enactment of State bankrupt laws, as applied to future, as well as present debts. We argue this from the words of the prohibition; from the association they are found in, and from the objects intended.

1. The words are general. The States can pass no law impairing contracts; that is, any contract. In the nature of things a law may impair a future contract, and, therefore, such contract is within the protection of the constitution. The words being general, it is for the other side to show a limitation; and this, it is submitted, they have wholly failed to do, unless they shall have established the doctrine that the law itself is part of the contract. It may be added, that the particular expression of the constitution is worth regarding. The thing prohibited is called a *law*, not an *act;* a law, in its general

acceptation, is a rule prescribed for future conduct, not a legislative interference with existing rights. The framers of the constitution would hardly have given the appellation of *law* to violent invasions of individual right, or individual property, by acts of legislative power. Although, doubtless, such acts fall within this prohibition, yet they are prohibited also by general principles, and by the constitutions of the States, and, therefore, further provision against such acts was not so necessary as against other mischiefs.

2. The most conclusive argument, perhaps, arises from the con nexion in which the clause stands. The words of the prohibition, so far as it applies to civil rights, or rights of property, are, "that no State shall coin money, emit bills of credit, make anything but gold and silver coin a tender in the payment of debts, or pass any law impairing the obligation of contracts." The prohibition of attainders, and *ex post facto* laws, refer entirely to criminal proceedings, and, therefore, should be considered as standing by themselves; but the other parts of the prohibition are connected by the subject matter, and ought, therefore, to be construed together. Taking the words thus together, according to their natural connexion, how is it possible to give a more limited construction to the term "contracts," in the last branch of the sentence, than to the word "debts," in that immediately preceding? Can a State make anything but gold and silver a tender in payment of future debts? This nobody pretends. But what ground is there for a distinction? No State shall make anything but gold and silver a tender in the payment of debts, nor pass any law impairing the obligation of contracts. Now, by what reasoning is it made out that the debts here spoken of, are any debts, either existing or future; but that the contracts spoken of are subsisting contracts only? Such a distinction seems to us wholly arbitrary. We see no ground for it. Suppose the article, where it uses the word *debts*, had used the word *contracts* The sense would have been the same then, as it now is; but the identity of terms would have made the nature of the distinction now contended for somewhat more obvious. Thus altered, the clause would read, that no State should make anything but gold and silver a tender in discharge of *contracts*, nor pass any law impairing the obligation of *contracts;* yet the first of these expressions would have been held to apply to all contracts, and the last to subsisting contracts only. This shows the consequence of what is now contended for in a strong light. It is certain that the substitution of the word *contracts*, for *debts*, would not alter the sense; and an argument that could not be sustained if such substitution were made, cannot be sustained now. We maintain, therefore, that if tender laws may not be made for future debts, neither can bankrupt laws be made for future contracts. All the arguments used here may be applied with equal force to tender laws for future debts. It may be said, for instance, that when it speaks of *debts*, the constitution means existing debts, and not mere possibilities of future debt; that the object was to preserve vested rights; and that if a man, after a tender law had passed, had contracted a debt, the manner in which that tender law authorised that debt to be discharged, became part of the contract, and that the whole debt, or whole obligation was thus

qualified by the pre-existing law, and was no more than a contract to deliver so much paper money, or of whatever other article which might be made a tender, as the original bargain expressed. Arguments of this sort will not be found wanting in favor of tender laws, if the Court yield to similar arguments in favor of bankrupt laws.

These several prohibitions of the constitution stand in the same paragraph; they have the same purpose, and were introduced for the same object; they are expressed in words of similar import, in grammar, and in sense; they are subject to the same construction, and, we think, no reason has yet been given for imposing an important restriction on one part of them, which does not equally show, that the same restriction might be imposed also on the other part.

We have already endeavoured to maintain, that one great political object, intended by the constitution, would be defeated, if this construction were allowed to prevail. As an object of political regulation, it was not important to prevent the States from passing bankrupt laws applicable to present debts, while the power was left to them in regard to future debts; nor was it at all important, in a political point of view, to prohibit tender laws as to future debts, while it was yet left to the States to pass laws for the discharge of such debts, which, after all, are little different, in principle, from tender laws. Look at the law before the Court in this view. It provides that if the debtor will surrender, offer, or *tender* to trustees, for the benefit of his creditors, all his estate and effects, he shall be discharged from all his debts. If it had authorised a tender of anything but money to any one creditor, though it were of a value equal to the debt, and thereupon provided for a discharge, it would have been clearly invalid. Yet it is maintained to be good, merely because it is made for all creditors, and seeks a discharge from all debts; although the thing tendered may not be equivalent to a shilling in the pound of those debts. This shows, again, very clearly how the constitution has failed of its purpose, if, having in terms prohibited all tender laws, and taken so much pains to establish a uniform medium of payment, it has yet left the States the power of discharging debts, as they may see fit, without any payment at all.

To recapitulate what has been said, we maintain; first, that the constitution, by its grants to Congress, and its prohibitions on the States, has sought to establish one uniform standard of value, or medium of payment. Second, that, by like means, it has endeavoured to provide for one uniform mode of discharging debts, when they are to be discharged without payment. Third, that these objects are connected, and that the first loses much of its importance, if the last, also, be not accomplished. Fourth, that reading the grant to Congress and the prohibition on the States together, the inference is strong that the constitution intended to confer an exclusive power to pass bankrupt laws on Congress. Fifth, that the prohibition, in the tenth section, reaches to all *contracts* existing or future, in the same way as the other prohibition in the same section extends to all *debts* existing or future. Sixthly, and that, upon any other construction, one great political object of the constitution will fail of its accomplishment.

REMARKS

IN THE CONVENTION OF DELEGATES CHOSEN TO REVISE THE CONSTITUTION OF MASSACHUSETTS, UPON THE RESOLUTION RELATIVE TO OATHS OF OFFICE. 1821.

It is obvious that the principal alteration, proposed by the first resolution, is the omission of the declaration of belief in the Christian religion, as a qualification for office, in the cases of the governor, lieutenant governor, counsellors, and members of the legislature. I shall content myself on this occasion with stating, shortly and generally, the sentiments of the select committee, as I understand them, on the subject of this resolution. Two questions naturally present themselves. In the first place; have the people a right, if in their judgment the security of their government and its due administration demand it, to require a declaration of belief in the Christian religion, as a qualification or condition of *office*? On this question, a majority of the committee held a decided opinion. They thought the people had such a right. By the fundamental principle of popular and elective governments, all office is in the free gift of the people. They may grant, or they may withhold it at pleasure;—and if it be for them, and them only, to decide whether they will grant office, it is for them to decide, also, on what terms, and with what conditions, they will grant it. Nothing is more unfounded than the notion that any man has a *right* to an office. This must depend on the choice of others, and consequently upon the opinions of others, in relation to his fitness and qualification for office. No man can be said to have a *right* to that, which others may withhold from him at pleasure. There are certain rights, no doubt, which the whole people, or the government as representing the whole people, owe to each individual, in return for that obedience and personal service, and proportionate contributions to the public burdens, which each individual owes to the government. These rights are stated with sufficient accuracy, in the tenth article of the Bill of Rights, in this constitution. "Each individual in society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to the standing laws." Here is no right of *office* enumerated; no right of governing others, or of bearing rule in the state. All bestowment of office remaining in the discretion of the people, they have of course a right to regulate it, by any rules which they may deem expedient. Hence the people, by their constitution, pre-

scribe certain qualifications for office, respecting age, property, residence, &c. But if office, merely as such, were a *right*, which each individual under the social compact was entitled to *claim*, all these qualifications would be indefensible. The acknowledged rights are not subject, and ought not to be subject, to any such limitation. The right of being protected, in life, liberty, and estate, is due to all, and cannot be justly denied to any, whatever be their age, property, or residence in the state. These qualifications, then, can only be made requisite as qualifications for office, on the ground that *office* is not what any man can demand, as matter of right, but rests in the confidence and good will of those who are to bestow it. In short, it seems to me too plain to be questioned, that the right of office is a matter of discretion, and option, and can never be *claimed* by any man, on the ground of obligation. It would seem to follow, then, that those who confer office may annex any such conditions to it as they think proper. If they prefer one man to another, they may act on that preference. If they regard certain personal qualifications, they may act accordingly, and ground of complaint is given to nobody. Between two candidates, otherwise equally qualified, the people at an election, may decide in favor of one because he is a Christian, and against the other because he is not. They may repeat this preference at the next election, on the same ground, and may continue it from year to year. Now, if the people may, without injustice, act upon this preference, and from a sole regard to this qualification, and refuse in any instance to depart from it, they have an equally clear right to *prescribe* this qualification, beforehand, as a rule for their future government. If they may do it, they may agree to do it. If they deem it necessary, they may so say, beforehand. If the public will may require this qualification, at every election as it occurs, the public will may declare itself beforehand; and make such qualification a standing requisite. That cannot be an unjust rule, the compliance with which, in every case, would be right. This qualification has nothing to do with any man's *conscience*. If he dislike the condition, he may decline the office; in like manner as if he dislike the salary, the rank, or anything else which the law attaches to it. However clear the right may be, (and I can hardly suppose any gentleman will dispute it,) the *expediency* of retaining the declaration is a more difficult question. It is said not to be necessary, because, in this commonwealth, ninety-nine out of every hundred of the inhabitants profess to believe in the Christian religion. It is sufficiently certain, therefore, that persons of this description, and none others, will ordinarily be chosen to places of public trust. There is as much security, it is said, on this subject, as the necessity of the case requires. And as there is a sort of opprobium—a marking out, for observation and censorious remark, a single individual, or a very few individuals, who may not be able to make the declaration,—it is an act, if not of injustice, yet of unkindness, and of unnecessary rigor, to call on such individuals to make the declaration. There is also another class of objections, which have been stated. It has been said, that there are many very devout and serious persons—persons who esteem the Christian religion to be above all price—to whom, nevertheless, the terms of this declaration seem somewhat too strong and

intense. They seem, to these persons, to require the declaration of that *faith* which is deemed essential to personal salvation; and therefore not at all fit to be adopted, by those who profess a belief in Christianity merely, in a more popular and general sense. It certainly appears to me, that this is a mistaken interpretation of the terms; that they imply only a general assent to the truth of the Christian revelation, and, at most, to the supernatural occurrences which establish its authenticity. There may, however, and there appears to be, *conscience* in this objection; and all conscience ought to be respected. I was not aware, before I attended the discussions in the committee, of the extent to which this objection prevailed. There is one other consideration to which I will allude, although it was not urged in committee. It is this. This qualificaton is made applicable only to the executive and the members of the legislature.—It would not be easy, perhaps, to say why it should not be extended to the judiciary, if it were thought necessary for any office. There can be no office, in which the sense of religious responsibility is more necessary, than in that of a judge; especially of those judges who pass, in the last resort, on the lives, liberty and property of every man. There may be among legislators, strong passions and bad passions. There may be party heats and personal bitterness. But legislation is in its nature general: laws usually affect the whole society; and if mischievous or unjust, the whole society is alarmed, and seeks their repeal. The judiciary power, on the other hand, acts directly on individuals. The injured may suffer, without sympathy or the hope of redress. The last hope of the innocent, under accusation, and in distress, is in the integrity of his judges. If this fail, all fails; and there is no remedy, on this side the bar of Heaven.—Of all places, therefore, there is none which so imperatively demands, that he who occupies it should be under the fear of God, and above all other fear, as the situation of a judge.—For these reasons, perhaps, it might be thought, that the constitution has not gone far enough, if the provisions already in it were deemed necessary to the public security. I believe I have stated the substance of the reasons which appeared to have weight with the committee. For my own part, finding this declaration in the constitution, and hearing of no practical evil resulting from it, I should have been willing to retain it, unless considerable objection had been expressed to it. If others were satisfied with it, I should be. I do not consider it, however, essential to retain it, as there is another part of the constitution which recognises, in the fullest manner, the benefits which civil society derives from those Christian institutions which cherish piety, morality and religion. I am conscious, that we should not strike out of the constitution all recognition of the Christian religion. I am desirous, in so solemn a transaction as the establishment of a constitution, that we should keep in it an expression of our respect and attachment to Christianity;—not, indeed, to any of its peculiar forms, but to its general principles.

REMARKS

IN THE CONVENTION, UPON THE RESOLUTION TO DIVIDE THE COMMONWEALTH INTO DISTRICTS FOR THE CHOICE OF SENATORS ACCORDING TO POPULATION.

I KNOW not, sir, whether it be probable that any opinions or votes of mine are ever likely to be of more permanent importance, than those which I may give in the discharge of my duties in this body. And of the questions which may arise here, I anticipate no one of greater consequence than the present. I ask leave, therefore, to submit a few remarks to the consideration of the committee.

The subject before us, is the manner of constituting the legislative department of government. We have already decided, that the legislative power shall exist as it has heretofore existed, in two separate and distinct branches, a Senate and a House of Representatives. We propose also, at least I have heard no intimation of a contrary opinion, that these branches shall, in form, possess a negative on each other. And I presume I may take it for granted, that the members of both these houses are to be chosen annually. The immediate question now under discussion, is, In *what manner* shall the senators be elected? They are to be chosen in districts; but shall they be chosen, in proportion to the *number of inhabitants* in each district, or in proportion to the *taxable property* of each district, or, in other words, *in proportion to the part which each district bears in the public burdens of the state.* The latter is the existing provision of the constitution; and to this I give my support. The proposition of the honorable member from Roxbury, (Mr. Dearborn,) proposes to divide the state into certain *legislative districts*, and to choose a given number of senators, and a given number of representatives, in each district, *in proportion to population.* This I understand. It is a simple and plain system. The honorable member from Pittsfield, and the honorable member from Worcester support the first part of this proposition—that is to say, that part which provides for the choice of *senators*, according to population—without explaining entirely their views, as to the latter part, relative to the choice of *representatives.* They insist that the questions are distinct, and capable of a separate consideration and decision. I confess myself, sir, unable to view the subject in that light. It seems to me, there is an essential propriety in considering the questions together; and in forming our opinions on the constitution of one, with reference

to that of the other. The Legislature is one great machine of government, not two machines; the two Houses are its parts, and its utility will, as it seems to me, depend not merely on the materials of these parts, or their separate construction, but on their accommodation, also, and adaption to each other. Their balanced and regulated movement, when united, is that which is expected to insure safety to the state; and who can give any opinion on this, without first seeing the construction of both, and considering how they are formed and arranged with respect to their mutual relation.—I cannot imagine, therefore, how the member from Worcester should think it uncandid to inquire of him, since he supports this mode of choosing senators, *what mode* he proposes for the choice of representatives.

It has been said that the constitution, as it now stands, gives more than an equal and proper number of senators to the county of Suffolk. I hope I may be thought to contend for the general principle, without being influenced by any regard to its local application. I do not inquire whether the senators, whom this principle brings into the government, will come from the county of Suffolk, or from the Housatonic river, or the extremity of Cape Cod. I wish to look only to the principle; and as I believe that to be sound and salutary, I give my vote in favor of maintaining it.

In my opinion, sir, there are two questions before the committee. The first is, shall the legislative department be constructed with any other *check* than such as arises simply from dividing the members of this department into two houses? The second is, if such other and further check ought to exist, *in what manner* shall it be created?

If the two houses are to be chosen in the manner proposed by the resolutions of the member from Roxbury, there is obviously no other check or control than a division into separate chambers. The members of both houses are to be chosen at the same time, by the same electors, in the same districts, and for the same term of office. They will of course all be actuated by the same feelings and interests. Whatever motives may at the moment exist to elect particular members of one house, will operate, equally, on the choice of members of the other. There is so little of real utility in this mode, that, if nothing more be done, it would be more expedient to choose all the members of the legislature, without distinction, simply as members of the legislature, and to make the division into two houses, either by lot, or otherwise, after these members thus chosen should have come up to the capital.

I understand the reason of *checks* and *balances*, in the legislative power, to arise from the truth, that, in representative governments that department is the leading and predominating power; and if its will may be at any time suddenly and hastily expressed, there is great danger that it may overthrow all other powers.—Legislative bodies naturally feel strong, because they are numerous, and because they consider themselves as the immediate representatives of the people. They depend on public opinion to sustain their measures, and they undoubtedly possess great means of influencing public opinion. With all the guards which can be raised by constitutional provisions, we are not likely to be too well secured against

cases of improper, or hasty, or intemperate legislation. It may be observed, also, that the executive power, so uniformly the object of jealousy to republics, has become, in the states of this union, deprived of the greatest part both of its importance and its splendor, by the establishment of the general government. While the states possessed the power of making war and peace, and maintained military forces, by their own authority, the power of the state executives was very considerable, and respectable. It might then even be an object, in some cases, of a just and warrantable jealousy. But a great change has been wrought. The care of foreign relations, the maintenance of armies and navies, and their command and control, have devolved on another government. Even the power of appointment, so exclusively, one would think, an executive power, is, in very many of the states, held or controlled by the legislature; that department either making the principal appointments, itself, or else surrounding the chief executive magistrate with a council, of its own election, possessing a negative upon his nominations.

Nor has it been found easy, nor in all cases possible, to preserve the judicial department from the progress of legislative encroachment. Indeed, in some of the states, all judges are appointed by the legislature; in others, although appointed by the executive, they are removable at the pleasure of the legislature. In all, the provision for their maintenance is necessarily to be made by the legislature. As if Montesquieu had never demonstrated the necessity of separating the departments of governments ; as if Mr. Adams had not done the same thing, with equal ability, and more clearness, in his defence of the American constitution; as if the sentiments of Mr. Hamilton and Mr. Madison, were already forgotten: we see, all around us, a tendency to extend the legislative power over the proper sphere of the other departments. And as the legislature, from the very nature of things, is the most powerful department, it becomes necessary to provide, in the mode of forming it, some check, which shall insure deliberation, and caution, in its measures. If all legislative power rested in one house, it is very problematical, whether any proper independence could be given, either to the executive or the judiciary. Experience does not speak encouragingly, on that point. If we look through the several constitutions of the states, we shall perceive that generally the departments are most distinct, and independent, where the legislature is composed of two houses, with equal authority, and mutual checks. If all legislative power be in one popular body, all other power, sooner or later, will be there also.

I wish, now, sir, to correct a most important mistake in the manner in which this question has been stated. It has been said, that we propose to give to property, merely as such, a control over the people, numerically considered. But this I take not to be at all the true nature of the proposition. The Senate is not to be a check on the *people*, but on the *House of Representatives*. It is the case of an authority, given to *one* agent, to check or control the acts of *another*. The people, having conferred on the House of Representatives powers which are great, and, from their nature, liable to abuse, require, for their own security, another house, which shall possess an

effectual negative on the first. This does not limit the power of the people; but only the authority of their agents. It is not a restraint on their rights, but a restraint on that power which they have delegated. It limits the authority of agents, in making laws to bind their principals. And if it be wise to give one agent the power of checking or controlling another, it is equally wise, most manifestly, that there should be some difference of character, sentiment, feeling, or origin, in that agent who is to possess this control. Otherwise, it is not at all probable that the control will ever be exercised. To require the consent of two agents to the validity of an act, and yet to appoint agents so similar, in all respects, as to create a moral certainty that what one does the other will do also, would be inconsistent, and nugatory.—There can be no effectual control, without some difference of origin, or character, or interest, or feeling, or sentiment. And the great question in this country has been, where to find, or how to create this difference, in governments entirely elective and popular? Various modes have been attempted, in various states. In some, a difference of qualification has been required, in the persons to be elected.—This obviously produces little or no effect. All property qualification, even the highest, is so low as to produce no exclusion, to any extent, in any of the states. A difference of age, in the persons elected, is sometimes required; but this is found to be equally unimportant. It has not happened, neither, that any consideration of the relative rank of the members of the two houses, has had much effect on the character of their constituent members. Both in the state governments, and in the United States government, we daily see persons elected into the House of Representatives who have been members of the Senate. Public opinion does not attach so much weight and importance to the distinction, as to lead individuals greatly to regard it. In some of the states, a different sort of qualification in the electors, is required, for the two houses; and this is probably the most proper and efficient check. But such has not been the provision in this commonwealth, and there are strong objections to introducing it. In other cases, again, there is a double election for senators; electors being first chosen, who elect senators. Such is the constitution of Maryland, in which the senators are elected for five years, by electors appointed in equal numbers by the counties; a mode of election not unlike that of choosing representatives in Parliament for the boroughs of Scotland. In this state, the qualification of the voters is the same, and there is no essential difference in that of the persons chosen.—But, in apportioning the senate to the different districts of the state, the present constitution assigns to each district a number proportioned to its public taxes. Whether this be the best mode of producing a difference in the construction of the two houses, is not now the question; but the question is, whether this be better than no mode.

The gentleman from Roxbury called for authority on this subject He asked, what writer of reputation had approved the principle for which we contend. I should hope, sir, that even if this call could not be answered, it would not necessarily follow, that the principle should be expunged. Governments are instituted for practical ben-

efit, not for subjects of speculative reasoning, merely. The best authority, for the support of a particular principle or provision in government, is experience; and, of all experience, our own, if it have been long enough to give the principle a fair trial, should be most decisive. This provision has existed for forty years, and while so many gentlemen contend that it is wrong in theory, no one has shown that it has been either injurious or inconvenient in practice. No one pretends, that it has caused a bad law to be enacted, or a good one to be rejected. To call on us, then, to strike out this provision, because we should be able to find no authority for it in any book on government, would seem to be like requiring a mechanic to abandon the use of an implement, which had always answered all the purposes designed by it, because he could find no model of it in the patent office.

But, sir, I take the *principle* to be well established, by writers of the greatest authority. In the first place, those who have treated of natural law, have maintained, as a principle of that law, that as far as the object of society is the protection of something in which the members possess unequal shares, it is just, that the weight of each person in the common councils should bear a relation and proportion to his interest. Such is the sentiment of Grotius, and he refers, in support of it, to several institutions among the ancient states.

Those authors who have written more particularly on the subject of political institutions, have, many of them, maintained similar sentiments.—Not, indeed, that every man's power should be in exact proportion to his property, but that, in a general sense, and in a general form, property, as such, should have its weight and influence in political arrangement. Montesquieu speaks with approbation of the early Roman regulation, made by Servius Tullius, by which the people were distributed into classes, according to their property, and the public burdens apportioned to each individual according to the degree of power which he possessed in the government. By which regulation, he observes, some bore with the greatness of their tax because of their proportionable participation in power and credit; others consoled themselves for the smallness of their power and credit, by the smallness of their tax. One of the most ingenious of political writers, is Mr. Harrington; an author not now read so much as he deserves. It is his leading object, in his Oceana, to prove, that power *naturally* and *necessarily* follows property.—He maintains that a government, founded on property, is legitimately founded; and that a government founded on the disregard of property, is founded in injustice, and can only be maintained by military force. "If one man," says he, "be sole landlord, like the grand signior, his empire is absolute. If a few possess the land, this makes the Gothic or Feudal constitution. If the *whole people* be landlords, then is it a commonwealth." "It is strange," says Mr. Pope, in one of his recorded conversations, "that Harrington should be the first man to find out so evident and demonstrable a truth as that, of property being the true basis and *measure* of power." In truth, he was not the first. The idea is as old as political science itself. It may be found in Aristotle, Lord Bacon, Sir Walter Raleigh, and other writers. Har-

rington seems, however, to be the first writer who has illustrated and expanded the principle, and given to it the effect and prominence which justly belong to it.

To this sentiment, sir, I entirely agree. It seems to me to be plain, that in the absence of military force, political power naturally and necessarily goes into the hands which hold the property. In my judgment, therefore, a republican form of government rests, not more on political constitutions, than on those laws which regulate the descent and transmission of property.—Governments like ours could not have been maintained, where property was holden according to the principles of the feudal system; nor, on the other hand, could the feudal constitution possibly exist with us. Our New England ancestors brought hither no great capitals, from Europe; and if they had, there was nothing productive in which they could have been invested. They left behind them the whole feudal system of the other continent. They broke away, at once, from that system of military service established in the dark ages, and which continues, down even to the present time, more or less to affect the condition of property all over Europe. They came to a new country. There were, as yet, no lands yielding rent, and no tenants rendering service. The whole soil was unreclaimed from barbarism. They were themselves, either from their original condition or from the necessity of their common interest, nearly on a general level, in respect to property. Their situation demanded a parcelling out and division of the lands; and it may be fairly said, that this necessary act *fixed the future frame and form of their government.* The character of their political institutions was determined by the fundamental laws respecting property. The laws rendered estates divisible, among sons, and daughters. The right of primogeniture, at first limited, and curtailed, was afterwards abolished. The property was all freehold. The entailment of estates, long trusts, and the other processes for fettering and tying up inheritances, were not applicable to the condition of society, and seldom made use of. On the contrary, alienation of the land was every way facilitated, even to the subjecting of it to every species of debt. The establishment of public registries, and the simplicity of our forms of conveyance, have greatly facilitated the change of real estate from one proprietor to another. The consequence of all these causes has been, a great subdivision of the soil, and a great equality of condition; the true basis, most certainly, of a popular government.—"If the people," says Harrington, "hold three parts in four of the territory, it is plain there can neither be any single person nor nobility able to dispute the government with them; in this case, therefore, *except force be interposed*, they govern themselves.

The history of other nations may teach us, how favorable to public liberty is the division of the soil into small freeholds; and a system of laws, of which the tendency is, without violence or injustice, to produce and to preserve a degree of equality of property. It has been estimated, if I mistake not, that about the time of Henry the VII, four fifths of the land, in England, was holden by the great barons, and ecclesiastics. The effects of a growing commerce soon afterwards began to break in on this state of things, and before the

revolution, in 1688, a vast change had been wrought. It is probable, perhaps, that for the last half century, the process of subdivision, in England, has been retarded, if not reversed; that the great weight of taxation has compelled many of the lesser freeholders to dispose of their estates, and to seek employment in the army and navy, in the professions of civil life, in commerce, or in the colonies. The effect of this on the British constitution cannot but be most unfavorable. A few large estates grow larger; but the number of those who have no estates also increases; and there may be danger, lest the inequality of property become so great, that those who possess it may be dispossessed by force. In other words, that the government may be overturned.

A most interesting experiment of the effect of a subdivision of property, on government, is now making in France. It is understood, that the law regulating the transmission of property, in that country, now divides it, real and personal, among all the children, equally, both sons and daughters; and that there is, also, a very great restraint on the power of making dispositions of property by will. It has been supposed, that the effect of this might probably be, in time, to break up the soil into such small subdivisions, that the proprietors would be too *poor* to resist the encroachments of executive power. I think far otherwise. What is lost in individual wealth, will be more than gained in numbers, in intelligence, and in a sympathy of sentiment. If, indeed, only one or a few landholders were to resist the crown, like the barons of England, they must of course be great and powerful landholders, with multitudes of retainers, to promise success. But if the proprietors of a given extent of territory are summoned to resistance, there is no reason to believe that such resistance would be less forcible, or less successful, because the number of such proprietors should be great. Each would perceive his own importance, and his own interest, and would feel that natural elevation of character which the consciousness of property inspires. A common sentiment would unite all, and numbers would not only add strength, but excite enthusiasm. It is true, that France possesses a vast military force, under the direction of an hereditary executive government; and military power, it is possible, may overthrow any government. It is in vain, however, in this period of the world, to look for security against military power, to the arm of the great landholders. That notion is derived from a state of things long since past; a state in which a feudal baron, with his retainers, might stand against the sovereign, who was himself but the greatest baron, and his retainers. But at present, what could the richest landholder do, against one regiment of disciplined troops? Other securities, therefore, against the prevalence of military power must be provided. Happily for us, we are not so situated as that any purpose of national defence requires, ordinarily and constantly, such a military force as might seriously endanger our liberties.

In respect, however, sir, to the recent law of succession in France, to which I have alluded, I would, presumptuously perhaps, hazard a conjecture, that if the government do not change the law, the law, in half a century, will change the government; and that this change will be, not in favor of the power of the crown, as some European

writers have supposed, but against it. Those writers only reason upon what they think correct general principles, in relation to this subject. They acknowledge a want of experience. Here, we have had that experience; and we know, that a multitude of small proprietors, acting with intelligence, and that enthusiasm which a common cause inspires, constitute not only a formidable, but an invincible power.

The true principle of a free and popular government would seem to be, so to construct it as to give to all, or at least to a very great majority, an interest in its preservation. To found it, as other things are founded, on men's interest. The stability of government requires, that those who desire its continuance should be more powerful than those who desire its dissolution. This power, of course, is not always to be measured by mere numbers.—Education, wealth, talents, are all parts and elements of the general aggregate of power; but numbers nevertheless constitute, ordinarily, the most important consideration, unless indeed there be *a military force* in the hands of the few, by which they can control the many. In this country we have actual existing systems of government, in the protection of which it would seem a great majority, both in numbers and in other means of power and influence, must see their interest. But this state of things is not brought about merely by written political constitutions, or the mere manner of organizing the government; but also by the laws which regulate the descent and transmission of property. The freest government, if it could exist, would not be long acceptable, if the tendency of the laws were to create a rapid accumulation of property in few hands, and to render the great mass of the population dependent and pennyless. In such a case, the popular power must break in upon the rights of property, or else the influence of property must limit and control the exercise of popular power.—Universal suffrage, for example, could not long exist in a community, where there was great inequality of property. The holders of estates would be obliged, in such case, either in some way to restrain the right of suffrage, or else such right of suffrage would, ere long, divide the property. In the nature of things, those who have not property, and see their neighbours possess much more than they think them to need, cannot be favorable to laws made for the protection of property. When this class becomes numerous, it grows clamorous. It looks on property as its prey and plunder, and is naturally ready, at all times, for violence and revolution.

It would seem then to be the part of political wisdom to found government on property; and to establish such distribution of property, by the laws which regulate its transmission and alienation, as to interest the great majority of society in the protection of the government. This is, I imagine, the true theory and the actual practice of our republican institutions. With property divided, as we have it, no other government than that of a republic could be maintained, even were we foolish enough to desire it. There is reason, therefore, to expect a long continuance of our systems. Party and passion, doubtless, may prevail at times, and much temporary mischief be done. Even modes and forms may be changed, and perhaps for the worse. But a great revolution, in regard to prop-

erty, must take place, before our governments can be moved from their republican basis, unless they be violently struck off by military power. The people possess the property, more emphatically than it could ever be said of the people of any other country, and they can have no interest to overturn a government which protects that property by equal laws.

If the nature of our institutions be to found government on property, and that it should look to those who hold property for its protection, it is entirely just that property should have its due weight and consideration, in political arrangements. Life, and personal liberty, are, no doubt, to be protected by law; but property is also to be protected by law, and is the fund out of which the means for protecting life and liberty are usually furnished. We have no experience that teaches us that any other rights are safe, where property is not safe. Confiscation and plunder, are generally in revolutionary commotions not far before banishment, imprisonment, and death. It would be monstrous to give even the name of government, to any association in which the rights of property should not be competently secured. The disastrous revolutions which the world has witnessed, those political thunderstorms and earthquakes which have overthrown the pillars of society, from their very deepest foundations, have been revolutions *against property*.—Since the honorable member from Quincy (President Adams) has alluded, on this occasion, to the history of the ancient states, it would be presumption in me to dwell upon it. It may be truly said, however, I think, that Rome herself is an example of the mischievous influence of the popular power, when disconnected with property, and in a corrupt age. It is true, the arm of Cæsar prostrated her liberty; but Cæsar found his support within her very walls. Those who were profligate and necessitous, and factious and desperate, and capable therefore of being influenced by bribes and largesses, which were distributed with the utmost prodigality, outnumbered, and out voted, in the tribes and centuries, the substantial, sober, prudent and faithful citizens. Property was in the hands of one description of men, and power in those of another; and the balance of the constitution was destroyed. Let it never be forgotten, that it was the popular magistrates, elevated to office where the bad outnumbered the good,—where those who had no stake in the commonwealth, by clamor, and noise, and numbers, drowned the voice of those who had,—that laid the neck of Rome at the feet of her conqueror. When Cæsar, manifesting a disposition to march his army into Italy, approached that little stream, which has become so memorable, from its association with his character and conduct, a decree was proposed in the senate, declaring him a public enemy, if he did not disband his troops. To this decree the popular tribunes, the sworn protectors of the people, interposed their negative; and thus opened the high road of Italy, and the gates of Rome herself, to the approach of her conqueror.

The English revolution of 1688 was a revolution *in favor of property*, as well as of other rights. It was brought about by the men of property, for their security; and our own immortal revolution was undertaken, not to shake or plunder property, but to protect it. The acts of which the country complained, were such as violated rights of property. An immense majority of all those who had an interest

in the soil, were in favor of the revolution; and they carried it through, looking to its results for the security of their possessions. It was the property of the frugal yeomanry of New England, hard earned, but freely given, that enabled her to act her proper part, and perform her full duty, in achieving the independence of the country.

I would not be thought, Mr. Chairman, to be among those who underrate the value of military service. My heart beats, I trust, as responsive as any one's, to a soldier's claim for honor and renown. It has ever been my opinion, however, that while celebrating the military achievements of our countrymen, in the revolutionary contest, we have not always done equal justice to the merits, and the sufferings, of those, who sustained, on their property, and on their means of subsistence, the great burden of the war. Any one, who has had occasion to be acquainted with the records of the New England towns, knows well how to estimate those merits, and those sufferings. Nobler records of patriotism exist nowhere. Nowhere can there be found higher proofs of a spirit, that was ready to hazard all, to pledge all, to sacrifice all, in the cause of the country. Instances were not unfrequent, in which small freeholders parted with their last hoof, and the last measure of corn from their granaries, to supply provision for the troops, and hire service for the ranks. The voice of Otis and of Adams in Faneuil Hall, found its full and true echo, in the little councils of the interior towns; and if within the Continental Congress patriotism shone more conspicuously, it did not there exist more truly, nor burn more fervently; it did not render the day more anxious, or the night more sleepless; it sent up no more ardent prayer to God, for succour; and it put forth in no greater degree, the fullness of its effort and the energy of its whole soul, and spirit, in the common cause, than it did in the small assemblies of the towns. I cannot, therefore, sir, agree that it is in favor of society, or in favor of the people, to constitute government, with an entire disregard to those who bear the public burdens in times of great exigency.—This question has been argued, as if it were proposed only to give an advantage to a few rich men. I do not so understand it. I consider it as giving property, generally, a representation in the Senate, both because it is just that it should have such representation, and because it is a convenient mode of providing that *check*, which the constitution of the legislature requires. I do not say that such check might not be found in some other provision; but this is the provision already established, and it is, in my opinion, a just and proper one.

I will beg leave to ask, sir, whether property may not be said to *deserve* this portion of respect and power in the government? It pays, at this moment, I think, *five sixths* of all the public taxes;—*one sixth* only being raised on persons. Not only, sir, do these taxes support those burdens which all governments require, but we have, in New England, from early times holden property to be subject to *another* great public use;—I mean the support of schools.

In this particular we may be allowed to claim a merit of a very high and peculiar character. This commonwealth, with other of the New England states, early adopted, and has constantly maintained the principle, that it is the undoubted right, and the bounden duty

of government, to provide for the instruction of all youth. That which is elsewhere left to chance, or to charity, we secure by law. For the purpose of public instruction, we hold every man subject to taxation, in proportion to his property, and we look not to the question, whether he, himself, have or have not children to be benefited by the education for which he pays. We regard it as a wise and liberal system of police, by which property, and life, and the peace of society are secured. We seek to prevent, in some measure, the extension of the penal code, by inspiring a salutary and conservative principle of virtue, and of knowledge, in an early age. We hope to excite a feeling of respectability, and a sense of character, by enlarging the capacity, and increasing the sphere of intellectual enjoyment. By general instruction, we seek, as far as possible, to purify the whole moral atmosphere; to keep good sentiments uppermost, and to turn the strong current of feeling and opinion, as well as the censures of the law, and the denunciations of religion, against immorality and crime. We hope for a security, beyond the law, and above the law, in the prevalence of enlightened and well principled moral sentiment. We hope to continue and to prolong the time, when, in the villages and farm houses of New England, there may be undisturbed sleep, within unbarred doors. And knowing that our government rests directly on the public will, that we may preserve it, we endeavour to give a safe and proper direction to that public will. We do not, indeed, expect all men to be philosophers, or statesmen; but we confidently trust, and our expectation of the duration of our system of government rests on that trust, that by the diffusion of general knowledge, and good and virtuous sentiments, the political fabric may be secure, as well against open violence and overthrow, as against the slow but sure undermining of licentiousness.

We know, sir, that at the present time an attempt is making in the English Parliament to provide by law for the education of the poor, and that a gentleman of distinguished character, (Mr. Brougham) has taken the lead, in presenting a plan to government for carrying that purpose into effect. And yet, although the representatives of the three kingdoms listened to him with astonishment as well as delight, we hear no principles with which we ourselves have not been familiar from youth; we see nothing in the plan, but an approach towards that system which has been established, in this state, for more than a century and a half. It is said, that in England, not more than *one child in fifteen*, possesses the means of being taught to read and write; in Wales, *one in twenty;* in France, until lately, when some improvement was made, not more than *one in thirty-five*. Now, sir, it is hardly too strong to say, that in this state, *every child possesses* such means. It would be difficult to find an instance to the contrary, unless where it was owing to the negligence of the parent—and in truth the means are actually used and enjoyed by nearly every one. A youth of fifteen, of either sex, who cannot both read and write, is very unfrequently to be found. How many such can any member of this convention remember to have met with in ten years? Sir, who can make this comparison, or contemplate this spectacle, without delight, and a feeling of just pride? And yet, sir, what is it but the *property* of the rich, devoted, by law, to the education of

the poor, which has produced this state of things? Does any history show property more beneficently applied? Did any government ever subject the property of those who have estates, to a burden, for a purpose more favorable to the poor, or more useful to the whole community? Sir, *property* and the power which the law exercises over it, for the purpose of instruction, is the basis of the system. It is entitled to the respect and protection of government, because, in a very vital respect, it aids and sustains government. The honorable member from Worcester, in contending for the admission of the mere popular principle in all branches of the government, told us, that our system rested on the intelligence of the community. He told us truly. But allow me, sir, to ask the honorable gentleman, what, but property, supplies the means of that intelligence? What living fountain feeds this ever-flowing, ever-refreshing, ever-fertilizing stream, of public instruction and general intelligence? If we take away from the towns the power of assessing taxes on property, will the school houses remain open? If we deny to the poor, the benefit which they now derive from the property of the rich, will their children remain on their forms, or will they not, rather, be in the streets, in idleness and in vice?

I might ask again, sir, how is it with religious instruction? Do not the towns and parishes, raise money, by vote of the majority, assessed on property, for the maintenance of religious worship? Are not the poor, as well as the rich benefited by the means of attending on public worship, and do they not, equally with the rich, possess a voice and vote, in the choice of the minister, and in all other parish concerns? Does any man, sir, wish to try the experiment, of striking out of the constitution the regard which it has hitherto maintained for property, and of foregoing also, the extraordinary benefit which society among us, for near two centuries, has derived, from laying the burden of religious and literary instruction of all classes upon property? Does any man wish to see those only worshipping God, who are able to build churches and maintain ministers for themselves; and those children only educated, whose parents possess the means of educating them? Sir, it is as unwise as it is unjust, to make property an object of jealousy. Instead of being, in any just sense, a popular course, such a course would be most injurious and destructive to the best interests of the people. The nature of our laws sufficiently secures us against any dangerous accumulations; and, used and diffused as we have it, the whole operation of property is in the highest degree useful, both to the rich and to the poor. I rejoice, sir, that every man in this community may call all property his own, so far as he has occasion for it, to furnish for himself and his children the blessings of religious instruction and the elements of knowledge. This celestial, and this earthly light, he is entitled to by the fundamental laws. It is every poor man's undoubted birthright, it is the great blessing which this constitution has secured to him, it is his solace in life, and it may well be his consolation in death, that his country stands pledged, by the faith which it has plighted to all its citizens, to protect his children from ignorance, barbarism and vice.

I will now proceed to ask, sir, whether we have not seen, and

whether we do not at this moment see, the advantage and benefit of giving security to property, by this and all other reasonable and just provisions? The constitution has stood, on its present basis, forty years. Let me ask, what state has been more distinguished for wise and wholesome legislation? I speak, sir, without the partiality of a native, and also without intending the compliment of a stranger; and I ask, what example have we had of better legislation? No violent measures affecting property, have been attempted.—Stop laws, suspension laws, tender laws, all the tribe of these arbitrary and tyrannical interferences between creditor and debtor, which, wheresoever practised, generally end in the ruin of both, are strangers to our statute book. An upright and intelligent judiciary has come in aid of wholesome legislation; and general security, for public and private rights, has been the result. I do not say that this is peculiar—I do not say that others have not done as well. It is enough, that in these respects we shall be satisfied that we are not behind our neighbours. No doubt, sir, there are benefits of every kind, and of great value, in possessing a character of government, both in legislative and judicial administration, which secures well the rights of property; and we should find it so, by unfortunate experience, should that character be lost. There are millions of personal property, now in this commonwealth, which are easily transferable, and would be instantly transferred elsewhere, if any doubt existed of its entire security. I do not know how much of this stability of government, and of the general respect for it, may be fairly imputed to this particular mode of organizing the senate. It has, no doubt, had some effect—It has shown a respect for the rights of property, and may have operated on opinion, as well as upon measures. Now, to strike out and obliterate it, as it seems to me, would be in a high degree unwise and improper.

As to the *right* of apportioning senators upon this principle, I do not understand how there can be a question about it. All government is a modification of general principles, and general truths, with a view to practical utility. Personal liberty, for instance, is a clear right, and is to be provided for; but it is not a clearer right than the right of property, though it may be more important. It is therefore entitled to protection. But property is also to be protected; and when it is remembered, how great a portion of the people of this state possess property, I cannot understand how its protection or its influence is hostile to their rights and privileges.

For these reasons, sir, I am in favor of maintaining that *check*, in the constitution of the legislature, which has so long existed there.

I understand the gentleman from Worcester, (Mr. Lincoln) to be in favor of a check, but it seems to me he would place it in the wrong House. Besides, the sort of *check* he proposes, appears to me to be of a novel nature, as a balance in government. He proposes to choose the senators according to the number of inhabitants; and to choose representatives, not according to that number, but in proportions greatly unequal in the town coporations. It has been stated to result from computation, and I do not understand it is denied, that, on his system, a majority of the representatives will be chosen by towns not containing *one third part* of the whole population

of the state. I would beg to ask, sir, on what principle this can stand; especially in the judgment of those who regard *population* as the only just basis of representation? But sir, I have a preliminary objection to this system; which is, that it reverses all our common notions, and constitutes the *popular* House upon *anti-popular* principles. We are to have a popular Senate of thirty-six members, and we are to place the *check* of the system in a House of Representatives of two hundred and fifty members! All money bills are to originate in the House, yet the House is not to be the popular branch. It is to exceed the Senate, seven or eight to one, in point of numbers—yet the Senate is to be chosen on the popular principle, and the House on some other principle.

It is necessary here, sir, to consider the manner of electing representatives in this commonwealth, as heretofore practised, the necessity which exists of reducing the present number of representatives, and the propositions which have been submitted for that purpose. Representation by towns or townships, (as they might have been originally more properly called) is peculiar to New England. It has existed however, since the first settlement of the country. These local districts are so small, and of such unequal population, that if every town is to have one representative, and larger towns as many more as their population, compared with the smallest town, would numerically entitle them to, a very numerous body must be the consequence, in any large state. Five hundred members, I understand, may now be constitutionally elected to the House of Representatives; the very statement of which number shows the necessity of reduction. I agree, sir, that this is a very difficult subject. Here are three hundred towns, all possessing the right of representation; and representation by towns, is an ancient habit of the people. For one, I am disposed to preserve this mode, so far as may be practicable. There is always an advantage in making the revisions, which circumstances may render necessary, in a manner which does no violence to ancient habits and established rules. I prefer therefore, a representation by towns, even though it should necessarily be somewhat numerous, to a division of the state into new districts, the parts of which might have little natural connexion or little actual intercourse with one another. But I ground my opinion in this respect on fitness and expediency, and the sentiments of the people; not on absolute right. The town corporations, simply as such, cannot be said to have any *right* to representation; except so far as the constitution creates such right. And this I apprehend to be the fallacy of the argument of the honorable member from Worcester. He contends, that the smallest town has a *right* to its representative. This is true; but the largest town (Boston) has a *right* also to fifty. These rights are precisely equal. They stand on the same ground, that is, on the provisions of the existing constitution. The honorable member thinks it quite just to reduce the right of the large town from fifty to ten, and yet, that there is no power to affect the right of the small town; either by uniting it with another small town for the choice of a representative, or otherwise. But I do not assent to that opinion. If it be right to take away half, or three fourths of the representation of the large

towns, it cannot be right to leave that of the small towns undiminished. The report of the committee proposes that these small towns shall elect a member every other year, half of them sending one year, and half the next; or else that two small towns shall unite and send one member every year. There is something apparently irregular and anomalous in sending a member every other year; yet, perhaps, it is no great departure from former habits; because these small towns, being by the present constitution compelled to pay their own members, have not ordinarily sent them oftener, on the average, than once in two years.

The honorable member from Worcester founds his argument on the *right* of town corporations, as such, to be represented in the legislature. If he only mean that right which the constitution at present secures, his observation is true, while the constitution remains unaltered. But if he intend to say that such right exists, *prior* to the constitution, and independent of it, I ask, whence is it derived? Representation of the people has heretofore been by towns, because such a mode has been thought convenient. Still it has been the representation of the people. It is no *corporate right*, to partake in the sovereign power and form part of the legislature. To estab lish this right, as a corporate right, the gentleman has enumerated the *duties* of the town corporation; such as the maintenance of public worship, public schools, and public highways; and insists that the performance of these duties gives the town a right to a representative in the legislature. But I would ask, sir, what possible ground there is for this argument? The burden of these duties falls not on any corporate funds belonging to the towns, but on the people, under assessments made on them individually, in their town meetings. As distinct from their individual *inhabitants*, the towns have no interest in these affairs. These duties are imposed by general laws; they are to be performed by the people, and if the people are represented in the making of these laws, the object is answered, whether they should be represented in one mode or another. But, farther, sir; are these municipal duties rendered to the state, or are they not rather performed by the people of the towns for their own benefit? The general treasury derives no supplies from all these contribu tions. If the towns maintain religious instruction, it is for the benefit of their own inhabitants. If they support schools, it is for the edu cation of the children of their inhabitants; and if they maintain roads and bridges, it is also for their own convenience. And therefore, sir, although I repeat that for reasons of expediency I am in favor of maintaining town representation, as far as it can be done with a proper regard to equality of representation, I entirely disagree to the notion, that every town has a *right*, which an alteration of the constitution cannot divest, if the general good require such alteration, to have a representative in the legislature.—The honorable member has declared that we are about to *disfranchise* corporations, and destroy chartered rights. He pronounces this system of representation an outrage, and declares that we are forging *chains and fetters* for the people of Massachusetts. "Chains and fetters!" This convention of delegates, chosen by the people within this month, and going back to the people, divested of all power, within

another month, yet occupying their span of time here, in forging chains and fetters for themselves and their constituents! "Chains and fetters!"—A popular assembly, of four hundred men, combining to fabricate these manacles for the people—and nobody, but the honorable member from Worcester, with sagacity enough to detect the horrible conspiracy, or honesty enough to disclose it! "Chains and fetters!" An assembly, most variously composed;—men of all professions and all parties; of different ages, habits and associations—all freely and recently chosen by their towns and districts; yet this assembly, in one short month, contriving to fetter and enslave itself and its constituents! Sir, there are some things too extravagant for the ornament and decoration of oratory;—some things too excessive, even for the fictions of poetry; and I am persuaded that a little reflection would satisfy the honorable member, that when he speaks of this assembly as committing outrages on the rights of the people, and as forging chains and fetters for their subjugation, he does as great injustice to his own character as a correct and manly debater, as he does to the motives and the intelligence of this body.

I do not doubt, sir, that some inequality exists, in the mode of representatives proposed by the committee. A precise and exact equality is not attainable, in any mode. Look to the gentleman's own proposition. By that, Essex, with twenty thousand inhabitants more than Worcester, would have twenty representatives less. Suffolk, which according to numbers would be entitled to twenty, would have, if I mistake not, eight or nine only.—Whatever else, sir, this proposition may be a specimen of, it is hardly a specimen of equality. As to the House of Representatives, my view of the subject is this. Under the present constitution, the towns have all a right to send representatives to the legislature, in a certain fixed proportion to their numbers. It has been found, that the full exercise of this right fills the House of Representatives with too numerous a body. What then is to be done?—Why, sir, the delegates of the towns are here assembled, to agree, mutually, on some reasonable mode of reduction. Now, sir, it is not for one party to stand sternly on its right, and demand all the concession from another. As to right, all are equal. The right which *Hull* possesses to send one, is the same as the right of *Boston* to send fifty. Mutual concession and accommodation, therefore, can alone accomplish the purpose of our meeting. If Boston consents, instead of fifty, to send but twelve or fifteen, the small towns must consent, either to be united, in the choice of their representatives, with other small towns, or to send a representative less frequently than every year; or to have an option to do one or the other of these, hereafter, as shall be found most convenient. This is what the report of the committee proposes, and, as far as we have yet learned, a great majority of the delegates from small towns approve the plan. I am willing, therefore, to vote for this part of the report of the committee; thinking it as just and fair a representation, and as much reduced in point of numbers, as can be reasonably hoped for, without giving up entirely the system of representation by towns. It is to be considered also, that according to the report of the committee, the pay of the members is to be out of the public treasury. Everybody must see

how this will operate on the large towns. Boston, for example, with its twelve or fourteen members, will pay for fifty. Be it so; it is incident to its property, and not at all an injustice, if proper weight be given to that property, and proper provision be made for its security.

To recur, again, to the subject of the Senate—there is one remark, made by gentlemen on the other side, of which I wish to take notice. It is said, that if the principle of representation, in the Senate, by property, be correct, it ought to be carried through; whereas, it is limited and restrained, by a provision that no district shall be entitled to more than six senators. But this is a prohibition, on the making of great districts, generally; not merely a limitation of the effect of the property principle. It prevents great districts from being made where the valuation is small, as well as where it is large. Were it not for this, or some similar prohibition, Worcester and Hampshire might have been joined, under the present constitution, and have sent perhaps ten or twelve senators. The limitation is a general one, introduced for general purposes; and if in a particular instance it bears hard on any county, this should be regarded as an evil incident to a good and salutary rule, and ought to be, as I doubt not it will be, quietly borne.

I forbear, Mr. Chairman, to take notice of many minor objections to the report of the committee. The defence of that report, especially in its details, properly belongs to other and abler hands. My purpose in addressing you, was, simply, to consider the propriety of providing in one branch of the legislature a real check upon the other. And as I look upon that principle to be of the highest practical importance, and as it has seemed to me that the doctrines contended for would go to subvert it, I hope I may be pardoned for detaining the committee so long.

REMARKS

IN THE CONVENTION, UPON A RESOLUTION TO ALTER THE CONSTITUTION, SO THAT JUDICIAL OFFICERS SHALL BE REMOVABLE BY THE GOVERNOR AND COUNCIL UPON THE ADDRESS OF TWO THIRDS (INSTEAD OF A MAJORITY) OF EACH BRANCH OF THE LEGISLATURE, AND ALSO THAT THE LEGISLATURE SHALL HAVE POWER TO CREATE A SUPREME COURT OF EQUITY AND A COURT OF APPEALS.

Regrets are vain for what is past; yet I hardly know how it has been thought to be a regular course of proceeding, to go into committee on this subject, before taking up the several propositions which now await their final readings on the President's table. The consequence is, that this question comes on by surprise. The chairman of the select committee is not present; many of the most distinguished members of the convention are personally so situated, as not to be willing to take part in the debate,—and the first law officer of the government, a member of the committee, happens at this moment to be in a place (the chair of the committee of the whole) which deprives us of the benefit of his observations. Under these circumstances, I had hoped the committee would rise.—It has, however, been determined otherwise, and I must therefore beg their indulgence while I make a few observations.

As the constitution now stands, all judges are liable to be removed from office, by the governor, with the consent of the council, on the address of the two houses of the legislature. It is not made necessary that the two houses should give any reasons for their address, or that the judge should have an opportunity to be heard. I look upon this as against common right, as well as repugnant to the general principles of the government. The commission of the judge purports to be, on the face of it, during good behavior. He has an interest, in his office. To give an authority to the legislature to deprive him of this, without trial or accusation, is manifestly to place the judges at the pleasure of the legislature.

The question is not what the legislature probably will do, but what they may do. If the judges, in fact, hold their offices only so long as the legislature see fit, then it is vain and illusory to say that the judges are independent men, incapable of being influenced by hope or by fear; but the tenure of their office is not independent. The general theory and principle of the government is broken in upon, by giving the legislature this power. The departments of govern-

ment are not equal, coordinate and independent, while one is thus at the mercy of the others. What would be said of a proposition to authorise the governor or judges to remove a senator, or member of the house of representatives from office?—And yet, the general theory of the constitution is to make the judges as independent as members of the legislature. I know not whether a greater improvement has been made in government than to separate the judiciary from the executive and legislative branches, and to provide for the decision of private rights, in a manner, wholly uninfluenced by reasons of state, or considerations of party or of policy. It is the glory of the British constitution to have led in the establishment of this most important principle. It did not exist in England before the revolution of 1688, and its introduction has seemed to give a new character to the tribunals. It is not necessary to state the evils which had been experienced, in that country, from dependent and timeserving judges. In matters of mere property, in causes of no political or public bearing, they might perhaps be safely trusted; but in great questions concerning public liberty, or the rights of the subject, they were, in too many cases, not fit to be trusted at all. Who would now quote Scroggs, or Saunders, or Jeffries, on a question concerning the right of the habeas corpus, or the right of suffrage, or the liberty of the press, or any other subject closely connected with political freedom? Yet on all these subjects, the sentiments of the English judges since the revolution,—of Somers, Holt, Jreby, Jekyl, &c., are, in general, favorable to civil liberty, and receive and deserve great attention, whenever referred to. Indeed, Massachusetts herself knows, by her own history, what is to be expected from dependent judges.—Her own charter was declared forfeited, without a hearing, in a court where such judges sat.

When Charles the second, and his brother after him, attempted the destruction of chartered rights, both in the kingdom and out of it, the *mode* was by judgments obtained in the courts. It is well known, that after the prosecution against the city of London was commenced, and while it was pending, the judges were changed; and Saunders, who had been consulted on the occasion, and had advised the proceeding on the part of the crown, was made chief justice for the very purpose of giving a judgment in favor of the crown; his predecessor being removed to make room for him. Since the revolution of 1688, an entire new character has been given to English judicature. The judges have been made independent, and the benefit has been widely and deeply felt. A similar improvement seems to have made its way into Scotland. Before the union of the kingdoms, it cannot be said that there was any judicial independence in Scotland; and the highest names in Scottish jurisprudence have been charged with being under influences which could not, in modern times, be endured. It is even said, that the practice of entails did not extensively exist in Scotland till about the time of the reigns of the last princes of the Stuart race, and was then introduced, to guard against unjust forfeitures. It is strange indeed, that this should happen at so late a period, and that a most unnatural and artificial state of property should be owing to the fear of dependent judicatures. I might add here, that the *heritable jurisdic-*

tions, the greatest almost of all evils, were not abolished in Scotland till about the middle of the last century; so slowly does improvement make progress when opposed by ignorance, prejudice or interest.

In our own country, it was for years a topic of complaint, before the revolution, that justice was administered, in some of the colonies, by judges dependent on the British crown. The Declaration of Independence, itself, puts forth this as a prominent grievance, among those which justified the revolution. The British king, it declares, "had made judges dependent on his own will alone, for the tenure of their offices." It was therefore to be expected, that in establishing their own governments, this important point of the independence of the judicial power would be regarded by the states. Some of them have made greater, and others less provision on this subject; the more recent constitutions, I believe, being generally framed with the most and best guards for judicial independence.

Those who oppose any additional security for the tenure of judicial office, have pressed to know what evil has been experienced—what injury has arisen from the constitution as it is. Perhaps none;—but if evils probably may arise, the question is, whether the subject be not so important as to render it prudent to guard against that evil. If evil do arise, we may be sure it will be a great evil; if this power should happen to be abused, it would be most mischievous in its consequences. It is not a sufficient answer, to say that we have as yet felt no inconvenience. We are bound to look to probable future events. We have, too, the experience of other states. Connecticut, having had judges appointed annually, from the time of Charles the second, in the recent alteration of her constitution, has provided, that hereafter they shall hold their office during good behavior, subject to removal on the address of *two thirds* of each house of the legislature. In Pennsylvania, the judges may be removed, "for any reasonable cause," on the address of *two thirds* of the two houses. In some of the states, *three fourths* of each house is required. The new constitution of Maine has a provision, with which I should be content; which is, that no judge shall be liable to be removed by the legislature till the matter of his accusation has been made known to him, and he has had an opportunity of being heard in his defence. This seems no more than common justice; and yet it is much greater than any security which at present exists in the constitution of this commonwealth.

It will be found, if I mistake not, that there are not more than two or three, out of all the states, which have left the tenure of judicial office at the entire pleasure of the legislature. It cannot be denied, that one great object of written constitutions is to keep the departments of government as distinct as possible; and for this purpose to impose restraints. And it is equally true, that there is no department on which it is more necessary to impose restraints than the legislature. The tendency of things is almost always to augment the power of that department, in its relation to the judiciary. The judiciary is composed of few persons, and those not such as mix habitually in the pursuits and objects which most engage public men. They are not, or never should be, political men. They have often unpleasant duties to perform, and their conduct is often liable to be

canvassed and censured, where their reasons for it are not known, or cannot be understood. The legislature holds the public purse. It fixes the compensation of all other departments: it applies, as well as raises, all revenue. It is a numerous body, and necessarily carries along with it a great force of public opinion. Its members are public men, in constant contact with one another, and with their constituents. It would seem to be plain enough, that, without constitutional provisions which should be fixed and certain, such a department, in case of excitement, would be able to encroach on the judiciary.—Therefore is it, that a security of judicial independence becomes necessary; and the question is, whether that independence be at present sufficiently secured.

The constitution being the supreme law, it follows of course, that every act of the legislature, contrary to that law, must be void. But who shall decide this question? Shall the legislature itself decide it? If so, then the constitution ceases to be a *legal* and becomes only a *moral* restraint on the legislature. If they, and they only, are to judge whether their acts be conformable to the constitution, then the constitution is *admonitory* or *advisory* only; not legally binding; because, if the *construction* of it rest wholly with them, their *discretion*, in particular cases, may be in favor of very erroneous and dangerous constructions. Hence the courts of law, necessarily, when the case arises, must decide upon the validity of particular acts.—These cases are rare, at least in this commonwealth; but they would probably be less so, if the power of the judiciary, in this respect, were less respectable than it is.

It is the theory and plan of the constitution to restrain the legislature, as well as other departments, and to subject their acts to judicial decision, whenever it appears that such acts infringe constitutional limits; and without this check, no certain limitation could exist on the exercise of legislative power. The constitution, for example, declares, that the legislature shall not suspend the benefit of the writ of *habeas corpus*, except under certain limitations. If a law should happen to be passed restraining personal liberty, and an individual, feeling oppressed by it, should apply for his *habeas corpus*, must not the judges decide what is the benefit of *habeas corpus*, intended by the constitution; what it is to *suspend it*, and whether the acts of the legislature do, in the given case, conform to the constitution? All these questions would of course arise. The judge is bound by his oath to decide according to law.—The constitution is the supreme law. Any act of the legislature, therefore, inconsistent with that supreme law, must yield to it; and any judge, seeing this inconsistency, and yet giving effect to the law, would violate both his duty and his oath. But it is evident that this power, to be useful, must be lodged in independent hands. If the legislature may remove judges at pleasure, assigning no cause for such removal, of course it is not to be expected that they would often find decisions against the constitutionality of their own acts. If the legislature should, unhappily, be in a temper to do a violent thing, it would probably take care to see that the bench of justice was so constituted as to agree with it in opinion.

It is unpleasant to allude to other states for negative examples; yet, if any one were inclined to the inquiry, it might be found, that cases had happened in which laws, known to be at best very questionable as to their consistency with the constitution, had been passed; and at the same session, effectual measures taken, under the power of removal by address, to create a new bench. Such a coincidence might be accidental; but the happening of such accidents often would destroy the balance of free governments. The history of all the states, I believe, shows the necessity of settled limits to legislative power. There are reasons, entirely consistent with upright and patriotic motives, which, nevertheless, evince the danger of legislative encroachments. The subject is fully treated by Mr. Madison, in some numbers of the Federalist, which well deserve the consideration of the convention.

There is nothing, after all, so important to individuals as the upright administration of justice. This comes home to every man; life, liberty, reputation, property, all depend on this.—No government does its duty to the people, which does not make ample and stable provision for the exercise of this part of its powers. Nor is it enough, that there are courts which will deal justly with mere private questions. We look to the judicial tribunal for protection against illegal or unconstitutional acts, from whatever quarter they may proceed. The courts of law, independent judges, and enlightened juries, are citadels of popular liberty, as well as temples of private justice. The most essential rights connected with political liberty, are there canvassed, discussed, and maintained; and if it should at any time so happen that these rights should be invaded, there is no remedy but a reliance on the courts, to protect and vindicate them. There is danger, also, that legislative bodies will sometimes pass laws interfering with other private rights, besides those connected with political liberty. Individuals are too apt to apply to the legislative power to interfere with private cases, or private property; and such applications sometimes meet with favor and support. There would be no security, if these interferences were not subject to some subsequent constitutional revision, where all parties could be heard, and justice administered according to standing laws.

These considerations are among those which, in my opinion, render an independent judiciary equally essential to the preservation of private rights and public liberty. I lament the necessity of deciding this question at the present moment; and should hope, if such immediate decision were not demanded, that some modification of this report might prove acceptable to the committee, since, in my judgment, some provision, beyond what exists in the present constitution, is necessary.

SPEECH

ON THE BANK OF THE UNITED STATES, DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, JAN. 2, 1815.

On the 2d January, 1815, the bill to incorporate a bank being under consideration, Mr. Webster moved that it be recommitted to a select committee, with instructions to make the following alterations, to wit:—

1. To reduce the capital to twenty-five millions, with liberty to the government to subscribe on its own account, five millions.
2. To strike out the thirteenth section.
3. To strike out so much of said bill as makes it obligatory on the bank to lend money to government.
4. To introduce a section providing, that if the bank do not commence its operations within the space of months, from the day of the passing of the act, the charter shall thereby be forfeited.
5. To insert a section allowing interest at the rate of *per cent.* on any bill or note of the bank, of which payment shall have been duly demanded, according to its tenor, and refused; and to inflict penalties on any directors who shall issue any bills or notes during any suspension of specie payment at the bank.
6. To provide that the said twenty-five millions of capital stock shall be composed of five millions of specie, and twenty millions of any of the stocks of the United States bearing an interest of six *per cent.* or of treasury notes.
7. To strike out of the bill that part of it which restrains the bank from selling its stock during the war.

In support of this motion, the following speech was delivered. The motion did not prevail, but the bill itself was rejected the same day on the third reading. Some of the main principles of these instructions were incorporated into the charter of the present bank, when that charter was granted the following year; especially those, which were more particularly designed to insure the payment of the notes of the bank in specie, at all times, on demand.

However the House may dispose of the motion before it, I do not regret that it has been made. One object intended by it, at least, is accomplished. It presents a choice, and it shows that the opposition which exists to the bill in its present state, is not an undistinguishing hostility to whatever may be proposed as a national bank, but a hostility to an institution of such a useless and dangerous nature, as it is believed the existing provisions of the bill would establish.

If the bill should be recommitted and amended according to the instructions which I have moved, its principles will be materially changed. The capital of the proposed bank will be reduced from

fifty to thirty millions: and composed of specie and stocks in nearly the same proportions as the capital of the former bank of the United States. The obligation to lend thirty millions of dollars to government, an obligation which cannot be performed without committing an act of bankruptcy, will be struck out. The power to suspend the payment of its notes and bills will be abolished, and the prompt and faithful execution of its contracts secured, as far as, from the nature of things, it can be secured. The restriction on the sale of its stocks will be removed, and as it is a monopoly, provision will be made that if it should not commence its operations in reasonable time, the grant shall be forfeited. Thus amended, the bill would establish an institution not unlike the last bank of the United States in any particular which is deemed material, excepting only the legalized amount of capital.

To a bank of this nature I should at any time be willing to give my support, not as a measure of temporary policy, or as an expedient to find means of relief from the present poverty of the treasury; but as an institution of permanent interest and importance, useful to the government and country at all times, and most useful in times of commerce and prosperity.

I am sure, sir, that the advantages which would at present result from any bank, are greatly overrated. To look to a bank, as a source capable, not only of affording a circulating medium to the country, but also of supplying the ways and means of carrying on the war, especially at a time when the country is without commerce, is to expect much more than ever will be obtained. Such high-wrought hopes can end only in disappointment. The means of supporting an expensive war are not of quite so easy acquisition. Banks are not revenue. They cannot supply its place. They may afford facilities to its collection and distribution. They may furnish, with convenience, temporary loans to government, in anticipation of its taxes, and render important assistance, in divers ways, to the general operation of finance. They are useful to the state in their proper place and sphere, but they are not sources of national income.

The fountains of revenue must be sunk deeper. The credit and circulation of bank paper are the effects, rather than the causes of a profitable commerce, and a well ordered system of finance. They are the props of national wealth and prosperity, not the foundations of them. Whoever shall attempt to restore the fallen credit of this country, by the creating of new banks, merely that they may create new paper, and that government may have a chance of borrowing where it has not borrowed before, will find himself miserably deceived. It is under the influence of no such vain hopes, that I yield my assent to the establishment of a bank on sound and proper principles. The principal good I expect from it is rather future than present. I do not see, indeed, that it is likely to produce evil at any time. In times to come, it will, I hope, be useful. If it were only to be harmless, there would be sufficient reason why it should be supported, in preference to such a contrivance as is now in contemplation.

The bank which will be erected by the bill, if it should pass in its present form, is of a most extraordinary, and, as I think, alarm-

ing nature. The capital is to be fifty millions of dollars; five millions in gold and silver, twenty millions in the public debt created since the war, ten millions in treasury notes, and fifteen millions to be subscribed by government, in stock to be created for that purpose. The ten millions in treasury notes, when received in payment of subscriptions to the bank, are to be funded also in United States' stocks. The stock subscribed by government on its own account, and those in which the treasury notes are to be funded, to be redeemable only at the pleasure of the government. The war stock will be redeemable according to the terms upon which the late loans have been negotiated.

The capital of the bank, then, will be five millions of specie and forty-five millions of government stocks. In other words, the bank will possess five millions of dollars, and the government will owe it forty-five millions. This debt from government, the bank is restrained from selling during the war, and government is excused from paying, until it shall see fit. The bank is also to be under obligation to loan government thirty millions of dollars on demand, to be repaid, not when the convenience or necessity of the bank may require, but when debts due to the bank, from government, are paid; that is, when it shall be the good pleasure of government. This sum of thirty millions is to supply the necessities of government, and to supersede the occasion of other loans. This loan will doubtless be made on the first day of the existence of the bank, because the public wants can admit of no delay. Its condition, then, will be, that it has five millions of specie, if it has been able to obtain so much, and a debt of seventy-five millions, no part of which it can either sell or call in, due to it from government.

The loan of thirty millions to government can only be made by an immediate issue of bills to that amount. If these bills should return, the bank will not be able to pay them. This is certain, and to remedy this inconvenience, power is given to the directors, by the act, to suspend, at their own discretion, the payment of their notes, until the President of the United States shall otherwise order. The President will give no such order, because the necessities of government will compel it to draw on the bank till the bank becomes as necessitous as itself. Indeed, whatever orders may be given or withheld, it will be utterly impossible for the bank to pay its notes. No such thing is expected from it. The first note it issues will be dishonored on its return, and yet it will continue to pour out its paper, so long as government can apply it in any degree to its purposes.

What sort of an institution, sir, is this? It looks less like a bank, than a department of government. It will be properly the paper-money department. Its capital is government debts; the amount of its issues will depend on government necessities; government, in effect, absolves itself from its own debts to the bank, and by way of compensation absolves the bank from its own contracts with others. This is, indeed, a wonderful scheme of finance. The government is to grow rich, because it is to borrow without the obligation of repaying, and is to borrow of a bank which issues paper without liability to redeem it. If this bank, like other institutions

which dull and plodding common sense has erected, were to pay its debts, it must have some limits to its issues of paper, and therefore, there would be a point beyond which it could not make loans to government. This would fall short of the wishes of the contrivers of this system. They provide for an unlimited issue of paper, in an entire exemption from payment. They found their bank, in the first place, on the discredit of government, and then hope to enrich government out of the insolvency of their bank. With them, poverty itself is the main source of supply, and bankruptcy a mine of inexhaustible treasure. They rely not in the ability of the bank, but in its beggary; not in gold and silver collected in its vaults, to pay its debts, and fulfil its promises, but in its locks and bars, provided by statute, to fasten its doors against the solicitations and clamors of importunate creditors. Such an institution, they flatter themselves, will not only be able to sustain itself, but to buoy up the sinking credit of the government. A bank which does not pay, is to guaranty the engagements of a government which does not pay! "John Doe is to become security for Richard Roe." Thus the empty vaults of the treasury are to be filled from the equally empty vaults of the bank, and the ingenious invention of a partnership between insolvents is to restore and reestablish the credit of both.

Sir, I can view this only as a system of rank speculation, and enormous mischief. Nothing in our condition is worse, in my opinion, than the inclination of government to throw itself upon such desperate courses. If we are to be saved, it is not to be by such means. If public credit is to be restored, this is not one of the measures that will help to restore it. If the treasury is exhausted, this bank will not fill it with anything valuable. If a safe circulating medium be wanted for the community, it will not be found in the paper of such a corporation.

I wish, sir, that those who imagine that these objects or any of them will be effected by such a bank as this, would describe the manner in which they expect it to be done. What is the process, which is to produce these results? If it is perceived, it can be described. The bank will not operate either by miracle or magic. Whoever expects any good from it, ought to be able to tell us in what way that good is to be produced. As yet, we have had nothing but general ideas, and vague and loose expressions. An indefinite and indistinct notion is entertained, nobody here seems to know on what ground, that this bank is to reanimate public credit, fill the treasury, and remove all the evils that have arisen from the depreciation of the paper of the existing banks.

Some gentlemen who do not profess themselves to be, in all respects, pleased with the provisions of the bill, seem to content themselves with an idea that nothing better can be obtained, and that it is necessary to do something. A strong impression that something must be done, is the origin of many bad measures. It is easy, sir, to do something, but the object is to do something useful. It is better to do nothing than to do mischief. It is much better, in my opinion, to make no bank, than to pass the bill as it now is.

The interests to be affected by this measure, the finances, the public credit, and the circulating medium of the country are too

important to be hazarded in schemes like these. If we wish to restore the public credit, and to reestablish the finances, we have the beaten road before us. All true analogy, all experience and all just knowledge of ourselves and our condition point one way. A wise and systematic economy, and a settled and substantial revenue, are the means to be relied on; not excessive issues of bank notes, a forced circulation, and all the miserable contrivances to which political folly can resort, with the idle expectation of giving to mere paper the quality of money.

These are all the inventions of a shortsighted policy, vexed and goaded by the necessities of the moment, and thinking less of a permanent remedy, than of shifts and expedients to avoid the present distress. They have been a thousand times adopted, and a thousand times exploded as delusive and ruinous, as destructive of all solid revenue, and incompatible with the security of private property.

It is, sir, sufficiently obvious, that to produce any benefit, this bank must be so constructed, as that its notes shall have credit with the public. The first inquiry, therefore, should be, whether the bills of a bank of this kind will not be immediately and greatly depreciated. I think they will. It would be a wonder if they should not. This effect will be produced by that excessive issue of its paper which the bank must make in its loan to government. Whether its issues of paper are excessive, will depend not on the nominal amount of its capital, but on its ability to redeem it. This is the only safe criterion. Very special cases may perhaps furnish exceptions, but there is, in general, no security for the credit of paper, but the ability, in those who emit, to redeem it. Whenever bank notes are not convertible into gold and silver, at the will of the holder, they become of less value than gold and silver. All experiments on this subject have come to the same result. It is so clear, and has been so universally admitted, that it would be waste of time to dwell upon it. The depreciation may not be sensibly perceived the first day, or the first week, it takes place. It will first be discerned in what is called the rise of specie; it will next be seen in the increased price of all commodities. The circulating medium of a commercial community, must be that which is also the circulating medium of other commercial communities, or must be capable of being converted into that medium, without loss. It must be able, not only to pass in payments and receipts, among individuals of the same society and nation, but to adjust and discharge the balance of exchanges between different nations. It must be something, which has a value abroad, as well as at home, and by which foreign as well as domestic debts can be satisfied. The precious metals alone answer these purposes. They alone, therefore, are money, and whatever else is to perform the offices of money, must be their representative, and capable of being turned into them at will. So long as bank paper retains this quality, it is a substitute for money; divested of this, nothing can give it that character. No solidity of funds, no sufficiency of assets, no confidence in the solvency of banking institutions has ever enabled them to keep up their paper to the value of gold and silver, any longer than they paid gold and

silver for it, on demand. This will continue to be the case so long as those metals shall continue to be the standard of value and the general circulating medium among nations.

A striking illustration of this common principle is found in the early history of the bank of England. In the year 1797, it had been so liberal of its loans, that it was compelled to suspend the payment of its notes. Its paper immediately fell to a discount of near twenty *per cent.* Yet such was the public opinion of the solidity of its funds, that its stock then sold for one hundred and ten *per cent.*, although no more than sixty *per cent.* upon the subscription had been paid in.

The same fate, as is well known, attended the banks of Scotland, when they adopted the practice of inserting in their notes a clause, giving the banks an option of paying their notes on demand, or six months after demand, with interest. Paper of this sort was not convertible into specie, at the pleasure of the holder; and no conviction of the ability of the bank which issued it, could preserve it from depreciation.

The suspension of specie payments by the bank of England, 1797, and the consequences which followed, afford no argument to overthrow this general experience. If bank of England notes were not immediately depreciated, on that occasion, depreciation, nevertheless, did ensue. Very favorable causes existed to prevent their sudden depression. It was an old and rich institution. It was known to be under the most discreet and independent management. Government had no control over it, to force it to make loans against its interest or its will. On the contrary, it compelled the government to pay, though with much inconvenience to itself, a very considerable sum which was due to it. The country enjoyed, at that time, an extensive commerce, and a revenue of three hundred millions of dollars was collected and distributed through the bank. Under all these advantages, however, the difference of price between bank notes and coin became at one time so great, as to threaten the most dangerous consequences.

Suppose the condition of England to have been reversed. Suppose that, instead of a prosperous and increasing commerce, she had suffered the ruin of her trade, and that the product of her manufactures had lain upon her hands, as the product of our agriculture now perishes in ours. Does any one imagine that her circulating paper could have existed and maintained any credit, in such a change of her condition? What ought to surprise us is not that her bank paper was depreciated, but that it was not depreciated sooner and lower than in fact it was. The reason can only be found in that extraordinary combination of favorable circumstances, which never existed before, and is hardly to be expected again. Much less is it to be discovered in our condition at present.

But we have experience nearer home. The paper of all the banks south of New England has become depreciated to an alarming extent. This cannot be denied. All that is said of the existence of this depreciation remote from the banks, is unfounded and idle. It exists everywhere. The rates of exchange, both foreign and domestic, puts this point beyond controversy. If a bill of exchange

on Europe can be purchased, as it may, twenty *per cent.* cheaper in Boston than in Baltimore, the reason must be that it is paid for, in Boston, in money, and in Baltimore, in something twenty *per cent.* less valuable than money.

Notwithstanding the depression of their paper, it is not probable that any doubt is entertained of the sufficiency of the funds of the principal banks. Certainly no such doubt is the cause of the fall of their paper; because the depression of the paper of all the banks in any place, is, as far as I learn, generally uniform and equal; whereas if public opinion proceeded at all upon the adequacy or inadequacy of their funds, it would necessarily come to different results, in different cases, as some of these institutions must be supposed to be richer than others.

Sir, something must be discovered which has hitherto escaped the observation of mankind, before you can give to paper, intended for circulation, the value of a metallic currency, any longer than it represents that currency, and is convertible into it, at the will of the holder.

The paper, then, of this bank, if you make it, will be depreciated, for the same reason that the paper of other banks that have gone before it, and of those which now exist around us has been depreciated, because it is not to pay specie for its notes.

Other institutions, setting out perhaps on honest principles, have fallen into discredit, through mismanagement or misfortune. But this bank is to begin with insolvency. It is to issue its bills to the amount of thirty millions, when everybody knows it cannot pay them. It is to commence its existence in dishonor. It is to draw its first breath in disgrace. The promise contained in the first note it sends forth, is to be a false promise, and whoever receives the note, is to take it, with the knowledge that it is not to be paid according to the terms of it.

But this, sir, is not all. The framers of this bill have not done their work by halves. They have put the depreciation of the notes of their bank beyond all doubt or uncertainty. They have made assurance doubly sure. In addition to excessive issues of paper, and the failure to make payments, both which they provide for by law, they make the capital of the bank, to consist principally of public stock.

If this stock should be sold as in the former bank of the United States, the evil would be less. But the bank has not the power to sell it, and for all purposes of enabling it to fulfil its engagements, its funds might as well be at the bottom of the ocean, as in government stocks, of which it cannot enforce payment, and of which it cannot dispose.

The credit of this institution is to be founded on public funds, not on private property, or commercial credit. It is to be a financial not a commercial bank. Its credit can hardly, therefore, be better at any time than the credit of the government. If the stocks be depreciated, so of course must everything be which rests on the stocks.

It would require extraordinary ingenuity to show how a bank, which is founded on the public debt, is to have any better reputation

than the debt itself. It must be some very novel invention, which makes the superstructure keep its place, after the foundation has fallen. The argument seems to stand thus: The public funds, it is admitted, have little credit; the bank will have no credit which it does not borrow of the funds; but the bank will be in full credit.

If, sir, we were in a temper to learn wisdom from experience, the history of most of the banks on the continent of Europe might teach us the futility of all these contrivances. Those were, like this before us, established for the purposes of finance, not purposes of commerce. The same fortune has happened to them all. Their credit has sunk. Their respective governments go to them for money when they can get it nowhere else; and the banks can relieve their wants, only by new issues of their own paper. As this is not redeemed, the invariable consequence of depreciation follows; and this has sometimes led to the miserable and destructive expedient of depreciation of the coin itself.

Such are the banks of Petersburg, Copenhagen, Vienna, and other cities of Europe; and while the paper of these government banks has been thus depressed, that of other banks existing in their neighbourhood, unconnected with government, and conducting their business on the basis of commercial credit, has retained a value equivalent to that of coin.

Excessive issues of paper and a close connexion with government, are the circumstances which of all others are the most certain to destroy the credit of bank paper. If there were no excessive issues, or, in other words, if the bank paid its notes in specie, on demand, its connexion with government and its interest in the funds would not, perhaps, materially affect the circulation of its paper, although they would naturally diminish the value of its stock. But when these two circumstances exist in the condition of any bank, that it does not pay its notes and that its funds are in public stocks, and all its operations intimately blended with the operations of government, nothing further need be known, to be quite sure that its paper will not answer the purpose of a creditable circulating medium.

I look upon it, therefore, sir, as certain, that a very considerable discount will attach itself to the notes of this bank, the first day of their appearance; that this discount will continue to increase; and unless Congress should be able to furnish some remedy, which is not certain, the paper, in the end, will be worth nothing. If this happens, not only will no one of the benefits proposed be obtained, but evils of the most alarming magnitude will follow. All the horrors of a paper-money system are before us. If we venture on the present expedient, we shall hardly be able to avoid them. The ruin of public affairs and the wreck of private property will ensue.

I would ask, sir, whether the friends of this measure have well considered what effect it will produce on the revenue of the country? By the provisions of this bill, the notes of this bank are to be received in payment of all taxes and other dues to government. They cannot be refused on account of the depreciation of their value. Government binds itself to receive them at par; although it should be obliged immediately to pay them out, at a discount of a hundred *per cent.* It is certain, then, that a loss in the revenue will

be sustained, equal to any depreciation which may take place in this paper; and when the paper shall come to nothing, the revenue of the country will come to nothing along with it. This has happened to other countries, where this wretched system has been adopted, and it will happen here.

The Austrian government resorted to a similar experiment, in a very critical period of its affairs, in 1809, the year of the last campaign between that country and France, previous to the coalition. Pressed by the necessities of the occasion, the government caused a large quantity of paper to be issued, which was to be received in imposts and taxes. The paper immediately fell to a depreciation of four for one. The consequence was, that the government lost its revenue, and, with it, the means of supplying its armies and defending its empire.

Is this government now ready, sir, to put its resources all at hazard, by pursuing a similar course? Is it ready to sacrifice its whole substantial revenue and permanent supplies to an ill-contrived, ill-considered, dangerous and ruinous project, adopted only as the means of obtaining a little present and momentary relief?

It ought to be considered, also, what effects this bank will produce on other banking institutions already existing, and on the paper which they have issued. The aggregate capital of these institutions is large. The amount of their notes is large, and these notes constitute, at present, in a great portion of the country, the only circulating medium, if they can be called a circulating medium. Whatever affects this paper, either to raise it, or depress it lower than it is, affects the interests of every man in the community.

It is sufficient on this point to refer to the memorial from the banks of New York. That assures us that it must be the operation of such a bank, as this bill would establish, to increase the difficulties and distress, which the existing banks now experience, and to render it nearly impossible for them to resume the payment of their notes. This is what every man would naturally expect. Paper already depreciated, will necessarily be sunk still lower, when another flood of depreciated paper is forced into circulation.

Very recently this government refused to extend the charter of the bank of the United States, upon the ground, that it was unconstitutional for Congress to create banks. Many of the state banks owe their existence to this decision. It was an invitation to the states to incorporate as much banking capital as would answer all the purposes of the country. Notwithstanding what we may now see and hear, it would then have been deemed a gross imputation on the consistency of government, if any man had expressed an expectation, that in five years all these constitutional scruples would be forgotten, all the dangers to political liberty from moneyed institutions disregarded, and a bank proposed upon the most extraordinary principles, with an unprecedented amount of capital, and with no obligation to fulfil its contracts.

The state banks have not forced themselves in the way of government. They were established, many of them at least, when government had declared its purpose to have no bank of its own. They deserve some regard on their own account, and on account of

those particularly concerned in them. But they deserve much more consideration, on account of the quantity of paper which is in circulation, and the interest which the whole community has in it.

Let it be recollected also, sir, that the present condition of the banks is principally owing to their advances to government. The treasury has borrowed of the banks, or of those who themselves borrowed of the banks, till the banks have become as poor, and almost as much discredited, as the treasury itself. They have depreciated their paper, nearly ruined themselves, and brought the sorest distress on the country, by doing that on a small scale, which this bank is to perform on a scale vastly larger.

It is almost unpardonable in the conductors of these institutions, not to have foreseen the consequences which have resulted from the course pursued by them. They were all plain and visible. If they have any apology, it is, that they were no blinder than the government, and that they yielded to those who would take no denial. It will be altogether unpardonable in us, if with this, as well as all other experience before us, we continue to pursue a system which must inevitably lead us through depreciation of currency, paper-money, tender-laws, and all the contemptible and miserable contrivances of disordered finance and national insolvency, to complete and entire bankruptcy in the end.

I hope the House will recommit the bill for amendment.

SPEECH

ON A RESOLUTION RELATIVE TO THE MORE EFFECTUAL COLLECTION OF THE PUBLIC REVENUE, DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, 1816.

The disordered state, in which the Currency of the country was left by the late war, is well known. With a view to correct the evil, Mr. Webster moved the following Resolution, in the House of Representatives. It passed both Houses, and was attended with complete success, in its operation.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Treasury be, and he hereby is, required and directed to adopt such measures as he may deem necessary, to cause, as soon as may be, all duties, taxes, debts, or sums of money, accruing or becoming payable to the United States, to be collected and paid in the legal currency of the United States, or Treasury notes, or notes of the Bank of the United States, as by law provided and declared, or in notes of Banks which are payable and paid on demand, in the said legal currency of the United States; and that, from and after the twentieth day of February next, no such duties, taxes, debts, or sums of money, accruing or becoming payable to the United States, as aforesaid, ought to be collected or received otherwise than in the legal currency of the United States, or Treasury notes, or notes of the Bank of the United State, or in notes of Banks which are payable and paid on demand, in the said legal currency of the United States.—Approved, April 30, 1816.

The Resolution was introduced by the following Speech.

Mr. Webster said, that he had felt it to be his duty to call the attention of the House once more to the subject of the collection of the revenue, and to present the resolutions which had been submitted. He had been the more inclined to do this from an apprehension that the rejection, yesterday, of the bill which had been introduced, might be construed into an abandonment, on the part of the House, of all hope of remedying the existing evil. He had had, it was true, some objections against proceeding by way of bill; because the case was not one in which the law was deficient, but one in which the execution of the law was deficient. The great object, however, was to obtain a decision of this and the other House, that the present mode of receiving the revenue should not be continued; and as this might be substantially effected by the bill, he had hoped that it might pass. This hope had been disappointed. The bill had been rejected. The House had put its negative upon the only propo-

sition which had been submitted to it, for correcting a state of things, which everybody knows to exist in plain violation of the constitution, and in open defiance of the written letter of the law. For one, he could never consent to adjourn, leaving this implied sanction of the House upon all that had taken place, and all that might hereafter take place. He hoped not to hear again that there was not now time to act on this question. If other gentlemen considered the question as important as he did, they would not forbear to act on it from any desire, however strong, to bring the session to an early close.

The situation of the country, said Mr. Webster, in regard to collection of its revenues is most deplorable. With a perfectly sound legal currency, the national revenues are not collected in this currency, but in paper of various sorts, and various degrees of value. The origin and progress of this evil is distinctly known, but it is not easy to see its duration or its future extent, if an adequate remedy be not soon found. Before the war, the business of the country was conducted principally by means of the paper of the different state banks. As these were in good credit, and paid their notes in gold and silver on demand, no great evil was experienced from the circulation of their paper. Not being, however, a part of the legal money of the country, it could not, by law, be received in the payment of duties, taxes or other debts to government. But being payable, and hitherto, regularly paid, on demand, the collectors and agents of government had generally received it as cash; it had been deposited as cash in the banks which received the deposits of government, and from them it had been drawn as cash, and paid off to creditors of the public.

During the war, this state of things changed. Many of the banks had been induced to make loans to a very great amount to government. These loans were made by an issue of their own bills. This proceeding threw into circulation an immense quantity of bank paper, in no degree corresponding with the mercantile business of the country, and resting on nothing for its payment and redemption, but the government stocks, which were holden by the banks. The consequence immediately followed, which it would be imputing a great degree of blindness both to the government and to the banks to suggest that they had not foreseen. The excess of paper which was found everywhere, created alarm. Demands began to be made on the banks, and they all stopped payment. No contrivance to get money without inconvenience to the people, ever had a shorter course of experiment, or a more unequivocal termination. The depreciation of bank notes was the necessary consequence of a neglect or refusal on the part of those who issued them to pay them. It took place immediately, and has continued, with occasional fluctuations in the depression, to the present moment. What still farther increases the evil is, that this bank paper being the issue of very many institutions, situated in different parts of the country, and possessing different degrees of credit, the depreciation has not been, and is not now, uniform throughout the United States. It is not the same at Baltimore as at Philadelphia, nor the same at Philadelphia as at New York. In New England, the banks have not stop-

ped payment in specie, and of course their paper has not been depressed at all. But the notes of banks which have ceased to pay specie, have, nevertheless, been, and still are, received for duties and taxes, in the places where such banks exist. The consequence of all this is, that the people of the United States pay their duties and taxes in currencies of different values, in different places. In other words, taxes and duties are higher in some places than they are in others, by as much as the value of gold and silver is greater than the value of the several descriptions of bank paper which are received by government. This difference in relation to the paper of the District where we now are, is twenty-five per cent. Taxes and duties, therefore, collected in Massachusetts, are one quarter higher than the taxes and duties which are collected, by virtue of the same laws, in the District of Columbia.

By the constitution of the government, it is certain that all duties, taxes and excises ought to be uniform throughout the United States; and that no preference should be given, by any regulation of commerce or revenue, to the ports of one state over those of another. This constitutional provision, it is obvious, is flagrantly violated. Duties and taxes are not uniform. They are higher in some places than in others. A citizen of New England pays his taxes in gold and silver, or their equivalent. From his hand the collector will not receive, and is instructed by government not to receive, the notes of the banks which do not pay their notes on demand, and which notes he could obtain twenty or twenty-five per cent. cheaper than that which is demanded of him. Yet a citizen of the middle states pays his taxes in these notes at par. Can a greater injustice than this be conceived ? Can constitutional provisions be disregarded in a more essential point ? Commercial preferences also are given, which, if they could be continued, would be sufficient to annihilate the commerce of some cities and some states, while they would extremely promote that of others. The importing merchant of Boston pays the duties upon his goods, either in specie or cash notes, which are at least twenty per cent. or in treasury notes which are ten per cent. more valuable than the notes which are paid for duties, at par, by the importing merchant at Baltimore. Surely this is not to be endured. Such monstrous inequality and injustice are not to be tolerated. Since the commencement of this course of things, it can be shown, that the people of the northern states have paid a million of dollars more than their just proportion of the public burdens. A similar inequality, though somewhat less in degree, has fallen upon the states south of the Potomac, in which the paper in circulation, although not equivalent to specie, is yet of higher value than the bank notes of this District, Maryland and the middle states.

But it is not merely the inequality and injustice of this system, if system it may be called, if not rather the want of all system, that call for reform. It throws the whole revenue into derangement, and endless confusion. It prevents the possibility of order, method or certainty in the public receipts or disbursements. This mass of depressed paper, thrown out at first in loans to accommodate government, has done little else than to embarrass and distress government

It can hardly be said to circulate, but it lies in the channel of circulation, and chokes it up by its bulk and its sluggishness. In a great proportion of the country, the dues are not paid, or are badly paid; and in an equal portion of the country the public creditors are not paid, or are paid badly.

It is quite clear, that by the statute all duties and taxes are required to be paid in the legal money of the United States, or in treasury notes, agreeably to recent provisions. It is just as clear, that the law has been disregarded, and that the notes of banks of an hundred different descriptions, and almost as many different values, have been received, and still are received, where the statute requires legal money or treasury notes to be paid.

In these circumstances, I cannot persuade myself that congress will adjourn, without attempting something by way of remedy. In my opinion, no greater evil has threatened us. Nothing can more endanger, either the existence and preservation of the public revenue, or the security of private property, than the consequences which are to be apprehended from the present course of things, if they be not arrested by a timely and an effectual interference. Let gentlemen consider what will probably happen, if congress should rise without the adoption of any measure on the subject.

Virginia, having passed a law for compelling the banks in that state to limit the circulation of their paper and resume specie payments by the autumn, will, doubtless, repeal it. The states further to the south will probably fall into a similar relaxation, for it is hardly to be expected that they will have firmness and perseverance enough, to persist in their present most prudent and commendable course, without the countenance of the general government.

If in addition to these events, an abandonment of the wholesome system, which has thus far prevailed in the northern states, or any relaxation of that system should take place, the government is in danger of falling into that condition, from which it can hardly be able to extricate itself for twenty years, if indeed it shall ever be able to extricate itself; and if that state of things, instead of being changed by the government, shall not change the government.

It is our business to foresee this danger, and to avoid it. There are some political evils which are seen as soon as they are dangerous, and which alarm at once as well the people as the government. Wars and invasions therefore are not always the most certain destroyers of national prosperity. They come in no questionable shape. They announce their own approach, and the general security is preserved by the general alarm. Not so with the evils of a debased coin, a depreciated paper currency, or a depressed and falling public credit. Not so with the plausible and insidious mischiefs of a paper money system. These insinuate themselves in the shape of facilities, accommodation, and relief. They hold out the most fallacious hope of an easy payment of debts, and a lighter burden of taxation. It is easy for a portion of the people to imagine that government may properly continue to receive depreciated paper, because they have received it, and because it is more convenient to obtain it than to obtain other paper, or specie. But on these subjects it is, that government ought to exercise its own peculiar wisdom and caution. It is

supposed to possess on subjects of this nature, somewhat more of foresight than has fallen to the lot of individuals. It is bound to foresee the evil before every man feels it, and to take all necessary measures to guard against it, although they may be measures attended with some difficulty and not without temporary inconvenience. In my humble judgment, the evil demands the immediate attention of congress. It is not certain, and in my opinion not probable, that it will ever cure itself. It is more likely to grow by indulgence, while the remedy which must in the end be applied, will become less efficacious by delay.

The only power which the general government possesses of restraining, the issues of the state banks, is to refuse their notes in the receipts of the treasury. This power it can exercise now, or at least it can provide now for exercising in reasonable time, because the currency of some part of the country is yet sound, and the evil is not universal. If it should become universal, who, that hesitates now, will then propose any adequate means of relief? If a measure, like the bill of yesterday, or the resolutions of to day, can hardly pass here now, what hope is there that any efficient measure will be adopted hereafter?

The conduct of the treasury department in receiving the notes of the banks, after they had suspended payment, might, or might not, have been excused by the necessity of the case. That is not now the subject of inquiry. I wish such inquiry had been instituted. It ought to have been. It is of dangerous consequence to permit plain omissions to execute the law to pass off, under any circumstance, without inquiry. It would probably be easier to prove, that the treasury must have continued to receive such notes, or that all payments to government would have been suspended, than it would be to justify the previous negotiations of great loans at the banks, which was a voluntary transaction, induced by no particular necessity, and which is nevertheless, beyond doubt, the principal cause of their present condition. But I have expressed my belief on more than one occasion, and I repeat the opinion, that it was the duty, and in the power of the secretary of the treasury, on the return of peace, to have returned to the legal and proper mode of collecting the revenue. The paper of the banks, rose, on that occasion, almost to an equality with specie; that was the favorable moment. The banks in which the public money was deposited ought to have been induced to lead the way, by the sale of their government stocks, and other measures calculated to bring about, moderately and gradually, but regularly and certainly, the restoration of the former and only safe state of things. It can hardly be doubted, that the influence of the treasury could have effected all this. If not, it could have withdrawn the deposits and countenance of government from institutions, which, against all rule and all propriety, were holding great sums in government stocks, and making enormous profits from the circulation of their own dishonored paper. That which was most wanted, was the designation of a time, for the corresponding operation of banks in different places. This could have been made by the head of the treasury, better than by anybody or everybody else. But the occasion was suffered to pass by unimproved, and the credit of the banks soon fell again,

when it was found they used none of the means which the opportunity gave themselves for enabling them to fulfil their engagements.

As to any power of compulsion to be exercised over the state banks, they are not subject to the direct control of general government. It is for the state authorities which created them to decide, whether they have acted according to their charters, and if not, what shall be the remedy for their irregularities. But from such of them as continued to receive deposits of public money, government had a right to expect that they would conduct their concerns according to the safe and well known principles which should properly govern such institutions. It is bound also to collect its taxes of the people on a uniform system. These rights and these duties are too important to be surrendered to the accommodation of any particular interest or any temporary purpose.

The resolutions before the House take no notice of the state banks. They express neither praise nor censure of them. They neither commend for their patriotism in the loans made to government, nor propose to tax them for their neglect or refusal to pay their debts. They assume no power of interfering with these institutions. They say not one word about compelling them to resume their payments; they leave that to the consideration of the banks themselves, or to those who have a right to call them to account for any misconduct in that respect. But the resolutions declare that taxes ought to be equal; that preferences ought not to be given; that the revenues of the country ought not to be diminished in amount, nor hazarded altogether by the receipt of varying and uncertain paper; and that the present state of things, in which all these unconstitutional, illegal and dangerous ingredients are mixed, ought not to exist.

It has been said that these resolutions may be construed into a justification of the past conduct of the treasury department. Such an objection has been anticipated. It was made, in my opinion, with much more justice to the bill rejected yesterday, and a provision was accordingly subsequently introduced into that bill to exclude such an interference. This is certainly not the time to express any justification or approbation of the conduct of that department on this subject, and I trust these resolutions do not imply it—Nor do the resolutions propose to express any censure. A sufficient reason for declining to do either, is, that the facts are not sufficiently known. What loss has actually happened, what amount, it is said to be large, may be now in the treasury, in notes which will not pass, or under what circumstances these were received, is not now sufficiently ascertained.

But before these resolutions are rejected, on the ground that they may shield the treasury department from responsibility, it ought to be clearly shown that they are capable of such a construction The mere passing of any resolution cannot have that effect. A declaration of what ought to be done, does not necessarily imply any sanction of what has been done. It may sometimes imply the contrary. These resolutions cannot be made to imply any more than this, that the financial affairs of the country are in such a condition, that the revenue cannot be instantly collected in legal currency. This they do imply, and this I suppose almost all admit to be true,

An instantaneous execution of the law, without warning or notice, could in my opinion produce nothing in a portion of the country, but an entire suspension of payments.

But to whose fault it is owing, that the affairs of the country are reduced to this condition, they do not declare. They do not prevent, or in any degree embarrass, future inquiry on that subject. They speak to the fact, that the finances are deranged. They say, also, that reformation, though it must be gradual, ought to be immediately begun, and to be carried to perfection in the shortest time practicable. They cannot by any fair construction, be made to express the approbation of congress on the past conduct of any high officer of government; and if the time shall ever come, when this House shall deem investigation necessary, it must be a case of very unpromising aspect, and of most fearful issue, which shall afford no other hope of escape than by setting up these resolutions by way of bar to an inquiry.

Nor is it any objection to this measure that inquiry has not first been had. Two duties may be supposed to have rested on the House: the one, to inquire into the origin of the evil, if it needed inquiry, and the other to find and apply the remedy. Because one of these duties has not hitherto been discharged, is no reason why the other should be longer neglected. While we are deciding which to do first, the time of the session is going by us, and neither may be done. In the meantime public mischiefs, of unknown magnitude and incalculable duration, threaten the country. I see no equivalent, no consolation, no mitigation, for these evils, in the future responsibility of departments. Let gentlemen show me any responsibility which will not be a name and a mockery. If, when we meet here again, it shall be found that all the barriers which have hitherto, in any degree, restrained the emissions of a mere paper money of the worst sort, have given way, and that the floods have broken in upon us and come over us: if it shall be found that revenues have failed—that the public credit, now a little propped and supported by a state of peace and commerce, has again tottered and fallen to the ground, and that all the operations of government are at a stand, what then will be the value of the responsibility of departments? How great then the value of inquiry, when the evil is past prevention, when officers may have gone out of place, and when, indeed, the whole administration will necessarily be dissolving, by the expiration of the term for which the chief executive magistrate was chosen?

I cannot consent to take the chance of the greatest public mischiefs upon a reliance on any such responsibility. The stakes are too unequal.

As to the opinion advanced by some, that the object, of the resolution cannot, in any way, be answered—that the revenues cannot be collected, otherwise than as they are now, in the paper of any and every banking association which chooses to issue paper, it cannot for a moment be admitted. This would be at once giving up the government; for what is government without revenue, and what is a revenue that is gathered together in the varying, fluctuating, discredited, depreciated, and still falling promissory notes of two or three hundred distinct, and, as to this government, irresponsible banking

companies. If it cannot collect its revenues in a better manner than this, it must cease to be a government. This thing therefore is to be done; at any rate it is to be attempted. That it will be accomplished by the treasury department, without the interference of congress, I have no belief. If from that source no reformation came, when reformation was easy, it is not now to be expected. Especially after the vote of yesterday, those whose interest it is to continue the present state of things, will arm themselves with the authority of Congress. They will justify themselves by the decision of this House. They will say, and say truly, that this House, having taken up the subject and discussed it, has not thought fit so much as to declare, that it is expedient ever to relieve the country or its revenues from a paper money system. Whoever believes that the treasury department will oppose this tide, aided, as it will be, by strong feeling and great interest, has more faith in that department than has fallen to my lot. It is the duty of this House to interfere with its own authority. Having taxed the people with no light hand, it is now its duty to take care that the people do not sustain these burdens in vain. The taxes are not borne without feeling. They will not be borne without complaint, if, by mismanagement in collection, their utility to government should be lost, and they should get into the treasury at last only in discredited and useless paper.

A bank of thirty-five millions has been created for the professed purpose of correcting the evils of our circulation, and facilitating the receipts and expenditures of government. I am not so sanguine in the hope of great benefit from this measure as others are. But the treasury is also authorised to issue twenty-five millions of treasury notes, eighteen or twenty millions of which remain yet to be issued, and which are also allowed by law to be received on duties and taxes. In addition to these is the coin which is in the country, and which is sure to come forth into circulation whenever there is a demand for it. These means, if wisely and skilfully administered, are sufficient to prevent any particular pressure or great inconvenience, in returning to the legal mode of collecting the revenue. It is true, it may be easier for the people in the states in which the depreciated paper exists to pay their taxes in such paper, than in the legal currency of treasury notes, because they can get it cheaper. But this is only saying that it is easier to pay a small tax, than to pay a large one: or that money costs more than that which is less valuable than money: a proposition not to be disputed. But a medium of payment, convenient for the people and safe for the government will be furnished, and may everywhere be obtained for a reasonable price. This is all that can justly be expected of congress. Having provided this, they ought to require all parts of the country to conform to the same measure of justice. If taxes be not necessary they should not be laid. If laid, they ought to be collected without preference or partiality.

But while some gentlemen oppose the resolutions because they fix a day too near, others think they fix a day too distant. In my own judgment, it is not so material what the time is, as it is to fix a time. The great object is to settle the question, that our legal currency is to be preserved, and that we are not about to embark on the

ocean of paper money. The state banks, if they consult their own interest, or the interest of the community, will dispose of their government stocks, and prepare themselves to redeem their paper and fulfil their contracts. If they should not adopt this course, there will be time for the people to be informed that the paper of such institutions will not answer the demands of government, and that duties and taxes must be paid in the manner provided by law.

I cannot say, indeed, that this measure will certainly produce the desired effect. It may fail. Its success, as is obvious, must essentially depend on the course pursued by the treasury department. But its tendency, I think, will be to produce good. It will, I hope, be a proof that congress is not regardless of its duty. It will be evidence that this great subject has not passed without notice. It will record our determination to resist the introduction of a most destructive and miserable policy into our system; and if there be any sanction or authority in the constitution and the law; if there be any regard for justice and equality: if there be any care for the national revenue, or any concern for the public interest, let gentlemen consider whether they will relinquish their seat here, before this or some other measure be adopted.

SPEECH

ON THE GREEK REVOLUTION, DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, JAN. 19, 1823.

On the 8th of December, 1823, Mr. Webster presented, in the House of Representatives, the following resolution:

"*Resolved*, That provision ought to be made, by law, for defraying the expense incident to the appointment of an Agent or Commissioner to Greece, whenever the President shall deem it expedient to make such appointment."

The House having, on the 19th of January, resolved itself into a Committee of the Whole, and this resolution being taken into consideration, Mr. Webster spoke to the following effect:

I am afraid, Mr. Chairman, that, so far as my part in this discussion is concerned, those expectations which the public excitement, existing on the subject, and certain associations, easily suggested by it, have conspired to raise, may be disappointed. An occasion which calls the attention to a spot, so distinguished, so connected with interesting recollections, as Greece, may naturally create something of warmth and enthusiasm. In a grave, political discussion, however, it is necessary that that feeling should be chastised. I shall endeavour properly to repress it, although it is impossible that it should be altogether extinguished. We must, indeed, fly beyond the civilized world, we must pass the dominion of law, and the boundaries of knowledge; we must, more especially, withdraw ourselves from this place, and the scenes and objects which here surround us, if we would separate ourselves, entirely, from the influence of all those memorials of herself which ancient Greece has transmitted for the admiration, and the benefit, of mankind. This free form of government, this popular assembly, the common council, held for the common good, where have we contemplated its earliest models? This practice of free debate, and public discussion, the contest of mind with mind, and that popular eloquence, which, if it were now here, on a subject like this, would move the stones of the Capitol,—whose was the language in which all these were first exhibited? Even the Edifice in which we assemble, these proportioned columns, this ornamented architecture, all remind us that Greece has existed, and that we, like the rest of mankind, are greatly her debtors. But I have not introduced this motion in the vain hope of discharging anything of this accumulated debt of centuries. I have not acted upon the expectation, that we, who have inherited this obligation from

our ancestors, should now attempt to pay it, to those who may seem to have inherited, from *their* ancestors, a right to receive payment. My object is nearer and more immediate. I wish to take occasion of the struggle of an interesting and gallant people, in the cause of liberty and Christianity, to draw the attention of the House to the circumstances which have accompanied that struggle, and to the principles which appear to have governed the conduct of the great States of Europe, in regard to it; and to the effects and consequences of these principles, upon the independence of nations, and especially upon the institutions of free governments. What I have to say of Greece, therefore, concerns the modern, not the ancient; the living, and not the dead. It regards her, not as she exists in history, triumphant over time, and tyranny, and ignorance; but as she now is, contending, against fearful odds, for being, and for the common privilege of human nature.

As it is never difficult to recite commonplace remarks, and trite aphorisms; so it may be easy, I am aware, on this occasion, to remind me of the wisdom which dictates to men a care of their own affairs, and admonishes them, instead of searching for adventures abroad, to leave other men's concerns in their own hands. It may be easy to call this resolution *Quixotic*, the emanation of a crusading or propagandist spirit. All this, and more, may be readily said; but all this, and more, will not be allowed to fix a character upon this proceeding, until that is proved, which it takes for granted. Let it first be *shown*, that, in this question, there is nothing which can affect the interest, the character, or the duty of this country. Let it be proved, that we are not called upon, by either of these considerations, to express an opinion on the subject to which the resolution relates. Let this be proved, and then it will, indeed, be made out, that neither ought this resolution to pass, nor ought the subject of it to have been mentioned in the communication of the President to us. But, in my opinion, this cannot be shown. In my judgment, the subject is interesting to the people and the government of this country, and we are called upon, by considerations of great weight and moment, to express our opinions upon it. These considerations, I think, spring from a sense of our own duty, our character, and our own interest. I wish to treat the subject on such grounds, exclusively, as are truly *American;* but then, in considering it as an American question, I cannot forget the age in which we live, the prevailing spirit of the age, the interesting questions which agitate it, and our own peculiar relation, in regard to these interesting questions. Let this be, then, and as far as I am concerned, I hope it will be, purely an American discussion; but let it embrace, nevertheless, everything that fairly concerns America; let it comprehend, not merely her present advantage, but her permanent interest, her elevated character, as one of the free states of the world, and her duty towards those great principles, which have hitherto maintained the relative independence of nations, and which have, more especially, made her what she is.

At the commencement of the session, the President, in the discharge of the high duties of his office, called our attention to the subject, to which this resolution refers. "A strong hope," says

that communication, "has been long entertained, founded on the heroic struggle of the Greeks, that they would succeed in their contest, and resume their equal station among the nations of the earth. It is believed that the whole civilized world takes a deep interest in their welfare. Although no power has declared in their favor, yet none, according to our information, has taken part against them. Their cause and their name, have protected them from dangers, which might, ere this, have overwhelmed any other people. The ordinary calculations of interest, and of acquisition with a view to aggrandizement, which mingle so much in the transactions of nations, seem to have had no effect in regard to them. From the facts which have come to our knowledge, there is good cause to believe that their enemy has lost, forever, all dominion over them: that Greece will become again an independent nation."

It has appeared to me, that the House should adopt some resolution, reciprocating these sentiments, so far as it should approve them. More than twenty years have elapsed, since Congress first ceased to receive such a communication from the President, as could properly be made the subject of a general answer. I do not mean to find fault with this relinquishment of a former, and an ancient practice. It may have been attended with inconveniences which justified its abolition. But, certainly, there was one advantage belonging to it; and that is, that it furnished a fit opportunity for the expression of the opinion of the Houses of Congress, upon those topics in the Executive communication, which were not expected to be made the immediate subjects of direct legislation. Since, therefore, the President's message does not now receive a general answer, it has seemed to me to be proper, that in some mode, agreeable to our own usual form of proceeding, we should express our sentiments upon the important and interesting topics on which it treats.

If the sentiments of the message in respect to Greece be proper, it is equally proper that this House should reciprocate those sentiments. The present resolution is designed to have that extent, and no more. If it pass, it will leave any future proceeding where it now is, in the discretion of the Executive Government. It is but an expression, under those forms in which the House is accustomed to act, of the satisfaction of the House with the general sentiments expressed in regard to this subject in the message, and of its readiness to defray the expense incident to any inquiry for the purpose of further information, or any other agency which the President, in his discretion, shall see fit, in whatever manner, and at whatever time, to institute. The whole matter is still left in his judgment, and this resolution can in no way restrain its unlimited exercise.

I might well, Mr. Chairman, avoid the responsibility of this measure, if it had, in my judgment, any tendency to change the policy of the country. With the general course of that policy, I am quite satisfied. The nation is prosperous, peaceful, and happy; and I should very reluctantly put its peace, prosperity, or happiness, at risk. It appears to me, however, that this resolution is strictly conformable to our general policy, and not only consistent with our interests, but even demanded by a large and liberal view of those interests.

It is certainly true, that the just policy of this country, is, in the first place, a peaceful policy. No nation ever had less to expect from forcible aggrandizement. The mighty agents which are working out our greatness, are time, industry, and the arts. Our augmentation is by growth, not by acquisition; by internal developement, not by external accession. No schemes can be suggested to us, so magnificent as the prospects which a sober contemplation of our own condition, unaided by projects, uninfluenced by ambition, fairly spreads before us. A country of such vast extent, with such varieties of soil and climate; with so much public spirit and private enterprise; with a population increasing so much beyond former examples, with capacities of improvement not only unapplied or unexhausted, but even, in a great measure, as yet, unexplored; so free in its institutions, so mild in its laws, so secure in the title it confers on every man to his own acquisitions; needs nothing but time and peace to carry it forward to almost any point of advancement.

In the next place, I take it for granted, that the policy of this country, springing from the nature of our government, and the spirit of all our institutions, is, so far as it respects the interesting questions which agitate the present age, on the side of liberal and enlightened sentiments. The age is extraordinary; the spirit that actuates it, is peculiar and marked; and our own relation to the times we live in, and to the questions which interest them, is equally marked and peculiar. We are placed, by our good fortune, and the wisdom and valor of our ancestors, in a condition in which we *can* act no obscure part. Be it for honor, or be it for dishonor, whatever we do, is not likely to escape the observation of the world. As one of the free states among the nations, as a great and rapidly rising republic, it would be impossible for us, if we were so disposed, to prevent our principles, our sentiments, and our example, from producing some effect upon the opinions and hopes of society throughout the civilized world. It rests probably with ourselves to determine, whether the influence of these shall be salutary or pernicious.

It cannot be denied that the great political question of this age, is that between absolute and regulated governments. The substance of the controversy is, whether society shall have any part in its own government. Whether the form of government shall be that of limited monarchy, with more or less mixture of hereditary power, or wholly elective, or representative, may perhaps be considered as subordinate. The main controversy is between that absolute rule, which, while it promises to govern well, means nevertheless to govern without control, and that regulated or constitutional system, which restrains sovereign discretion, and asserts that society may claim, as matter of right, some effective power in the establishment of the laws which are to regulate it. The spirit of the times sets with a most powerful current, in favor of these last mentioned opinions. It is opposed, however, whenever and wherever it shows itself, by certain of the great potentates of Europe; and it is opposed on grounds as applicable in one civilized nation as in another, and which would justify such opposition in relation to the United States, as well as in relation to any other state,

or nation, if time and circumstance should render such opposition expedient.

What part it becomes this country to take on a question of this sort, so far as it is called upon to take any part, cannot be doubtful Our side of this question is settled for us, even without our own volition. Our history, our situation, our character, necessarily decide our position and our course, before we have even time to ask whether we have an option. Our place is on the side of free institutions. From the earliest settlement of these states, their inhabitants were accustomed, in a greater or less degree, to the enjoyment of the powers of self-government; and for the last half century, they have sustained systems of government entirely representative, yielding to themselves the greatest possible prosperity, and not leaving them without distinction and respect among the nations of the earth. This system we are not likely to abandon; and while we shall no farther recommend its adoption to other nations, in whole or in part, than it may recommend itself by its visible influence on our own growth and prosperity, we are, nevertheless, interested, to resist the establishment of doctrines which deny the legality of its foundations. We stand as an equal among nations, claiming the full benefit of the established international law; and it is our duty to oppose, from the earliest to the latest moment, any innovations upon that code, which shall bring into doubt or question our own equal and independent rights.

I will now, Mr. Chairman, advert to those pretensions, put forth by the Allied Sovereigns of continental Europe, which seem to me calculated, if unresisted, to bring into disrepute the principles of our government, and indeed to be wholly incompatible with any degree of national independence. I do not introduce these considerations for the sake of topics. I am not about to declaim against crowned heads, nor to quarrel with any country for preferring a form of government different from our own. The choice that we exercise for ourselves, I am quite willing to leave also to others. But it appears to me that the pretensions of which I have spoken, are wholly inconsistent with the independence of nations generally, without regard to the question, whether their governments be absolute, monarchical and limited, or purely popular and representative. I have a most deep and thorough conviction, that a new era has arisen in the world, that new and dangerous combinations are taking place, promulgating doctrines, and fraught with consequences, wholly subversive, in their tendency, of the public law of nations, and of the general liberties of mankind. Whether this be so, or not, is the question which I now propose to examine, upon such grounds of information, as the common and public means of knowledge disclose.

Everybody knows that, since the final restoration of the Bourbons to the throne of France, the continental powers have entered into sundry alliances, which have been made public, and have held several meetings or Congresses, at which the principles of their political conduct have been declared. These things must necessarily have an effect upon the international law of the states of the world. If that effect be good, and according to the principles of that law, they deserve to be applauded. If, on the contrary, their effect and tendency be

most dangerous, their principles wholly inadmissible, their pretensions such as would abolish every degree of national independence, then they are to be resisted.

I begin, Mr. Chairman, by drawing your attention to the treaty, concluded at Paris in September, 1815, between Russia, Prussia, and Austria, commonly called the Holy Alliance. This singular alliance appears to have originated with the Emperor of Russia; for we are informed that a draught of it was exhibited by him, personally, to a plenipotentiary of one of the great powers of Europe, before it was presented to the other sovereigns who ultimately signed it.* This instrument professes nothing, certainly, which is not extremely commendable and praiseworthy. It promises only that the contracting parties, both in relation to other states, and in regard to their own subjects, will observe the rules of justice and Christianity. In confirmation of these promises, it makes the most solemn and devout religious invocations. Now, although such an alliance is a novelty in European history, the world seems to have received this treaty, upon its first promulgation, with general charity. It was commonly understood as little or nothing more than an expression of thanks for the successful termination of the momentous contest, in which those sovereigns had been engaged. It still seems somewhat unaccountable, however, that these good resolutions should require to be confirmed by treaty. Who doubted, that these august sovereigns would treat each other with justice, and rule their own subjects in mercy? And what necessity was there, for a solemn stipulation by treaty, to ensure the performance of that, which is no more than the ordinary duty of every government? It would hardly be admitted by these sovereigns, that, by this compact, they suppose themselves bound to introduce an entire change, or any change, in the course of their own conduct. Nothing substantially new, certainly, can be supposed to have been intended. What principle, or what practice, therefore, called for this solemn declaration of the intention of the parties to observe the rules of religion and justice?

It is not a little remarkable, that a writer of reputation upon the Public Law, described, many years ago, not inaccurately, the character of this alliance: I allude to Puffendorff. "It seems useless," says he, "to frame any pacts or leagues, barely for the defence and support of universal peace; for, by such a league, nothing is superadded to the obligation of natural law, and no agreement is made for the performance of anything, which the parties were not previously bound to perform; nor is the original obligation rendered firmer or stronger by such an addition. Men of any tolerable culture and civilisation, might well be ashamed of entering into any such compact, the conditions of which imply only that the parties concerned shall not offend in any clear point of duty. Besides, we should be guilty of great irreverence towards God, should we suppose that his injunctions had not already laid a sufficient obligation upon us to act justly, unless we ourselves voluntarily consented to the same engagement: as if our obligation to obey his will, depended upon our own pleasure.

* Vide Lord Castlereagh's Speech in the House of Commons, February 3, 1816. Debates in Parliament, vol. 36, page 355; where also the Treaty may be found at length.

"If one engage to serve another, he does not set it down expressly and particularly among the terms and conditions of the bargain, that he will not betray nor murder him, nor pillage nor burn his house. For the same reason, *that* would be a dishonorable engagement, in which men should bind themselves to act properly and decently, and not break the peace."*

Such were the sentiments of that eminent writer. How nearly he had anticipated the case of the Holy Alliance, will appear from comparing his observations with the preamble to that alliance, which is as follows:

"In the name of the most Holy and Indivisible Trinity, their Majesties the Emperor of Austria, the King of Prussia, and the Emperor of Russia,"—"solemnly declare, that the present act has no other object than to publish, in the face of the whole world, their fixed resolution, both in the administration of their respective states, and in their political relations with every other government, to take for their sole guide the precepts of that holy religion, namely, the precepts of justice, Christian charity, and peace, which, far from being applicable only to private concerns, must have an immediate influence on the councils of princes, and guide all their steps, as being the only means of consolidating human institutions, and remedying their imperfections."

This measure, however, appears principally important, as it was the first of a series, and was followed afterwards by others of a more marked and practical nature. These measures, taken together, profess to establish two principles, which the Allied Powers would enforce, as a part of the law of the civilized world; and the establishment of which is menaced by a million and a half of bayonets.

The first of these principles is, that all popular, or constitutional rights, are holden no otherwise than as grants from the crown. Society, upon this principle, has no rights of its own; it takes good government, when it gets it, as a boon and a concession, but can demand nothing. It is to live in that favor which emanates from royal authority, and if it have the misfortune to lose that favor, there is nothing to protect it against any degree of injustice and oppression. It can rightfully make no endeavour for a change, by itself; its whole privilege is to receive the favors that may be dispensed by the sovereign power, and all its duty is described in the single word, *submission*. This is the plain result of the principal continental state papers; indeed it is nearly the identical text of some of them.

The Laybach circular of May, 1821, alleges, "that useful and necessary changes in legislation and administration, ought only to emanate from the free will and intelligent conviction of those whom God has rendered responsible for power; all that deviates from this line necessarily leads to disorder, commotions, and evils, far more insufferable than those which they pretend to remedy."† Now, sir, this principle would carry Europe back again, at once, into the middle of the dark ages. It is the old doctrine of the divine right of kings, advanced now, by new advocates, and sustained by a formidable array of power. That the people hold their fundamental privileges, as matter of *concession* or *indulgence*, from the sovereign

* Book 2, cap. 2. † Annual Register, for 1821.

power, is a sentiment not easy to be diffused in this age, any farther than it is enforced by the direct operation of military means. It is true, certainly, that some six centuries ago, the early founders of English liberty called the instrument which secured their rights a *Charter;* it was, indeed, a concession; they had obtained it, sword in hand, from the king; and, in many other cases, whatever was obtained, favorable to human rights, from the tyranny and despotism of the feudal sovereigns, was called by the names of *privileges* and *liberties*, as being matter of special favor. And, though we retain this *language* at the present time, the principle itself belongs to ages that have long passed by us. The civilized world has done with the enormous faith, of many made for one. Society asserts its own rights, and alleges them to be original, sacred, and unalienable. It is not satisfied with having kind masters; it demands a participation in its own government: and, in states much advanced in civilisation, it urges this demand with a constancy and an energy, that cannot well, nor long, be resisted. There are, happily, enough of regulated governments in the world, and those among the most distinguished, to operate as constant examples, and to keep alive an unceasing panting in the bosoms of men, for the enjoyment of similar free institutions.

When the English revolution of 1688 took place, the English people did not content themselves with the example of Runnymede; they did not build their hopes upon royal charters; they did not, like the Laybach circular, suppose that all useful changes in constitutions and laws must proceed from those only whom God has rendered responsible for power. They were somewhat better instructed in the principles of civil liberty, or at least they were better lovers of those principles, than the sovereigns of Laybach. Instead of petitioning for charters, they *declared* their rights, and, while they offered to the family of Orange the crown with one hand, they held in the other an enumeration of those privileges which they did not profess to hold as favors, but which they *demanded* and *insisted upon*, as their undoubted rights.

I need not stop to observe, Mr. Chairman, how totally hostile are these doctrines of Laybach, to the fundamental principles of *our* government. They are in direct contradiction: the principles of good and evil are hardly more opposite. If these principles of the sovereigns be true, we are but in a state of rebellion, or of anarchy, and are only tolerated among civilized states, because it has not yet been convenient to conform us to the true standard.

But the second, and, if possible, the still more objectionable principle, avowed in these papers, is the right of forcible interference in the affairs of other states. A right to control nations in their desire to change their own government, wherever it may be conjectured, or pretended that such change might furnish an *example* to the subjects of other states, is plainly and distinctly asserted. The same Congress that made the declaration at Laybach, had declared, before its removal from Troppau, "that the powers have an undoubted right to take a hostile attitude in regard to those states in which the overthrow of the government may operate as an example."

There cannot, as I think, be conceived a more flagrant violation of public law, or national independence, than is contained in this short declaration.

No matter what be the character of the government resisted; no matter with what weight the foot of the oppressor bears on the neck of the oppressed; if he struggle, or if he complain, he sets a dangerous example of resistance,—and from that moment he becomes an object of hostility to the most powerful potentates of the earth. I want words to express my abhorrence of this abominable principle. I trust every enlightened man throughout the world will oppose it, and that, especially, those who, like ourselves, are fortunately out of the reach of the bayonets that enforce it, will proclaim their detestation of it, in a tone both loud and decisive. The avowed object of such declarations is to preserve the peace of the world. But by what means is it proposed to preserve this peace? Simply, by bringing the power of all governments to bear against all subjects. Here is to be established a sort of double, or treble, or quadruple, or, for aught I know, a quintuple allegiance. An offence against one king is to be an offence against all kings, and the power of all is to be put forth for the punishment of the offender. A right to interfere in extreme cases, in the case of contiguous states, and where imminent danger is threatened to one by what is transpiring in another, is not without precedent in modern times, upon what has been called the law of vicinage; and when confined to extreme cases, and limited to a certain extent, it may perhaps be defended upon principles of necessity and self-defence. But to maintain that sovereigns may go to war upon the subjects of another state to *repress an example*, is monstrous indeed. What is to be the limit to such a principle, or to the practice growing out of it? What, in any case, but sovereign pleasure is to decide whether the example be good or bad? And what, under the operation of such rule, may be thought of OUR *example*? Why are we not as fair objects for the operation of the new principle, as any of those who may attempt to reform the condition of their government, on the other side of the Atlantic?

The ultimate effect of this alliance of sovereigns, for objects personal to themselves, or respecting only the permanence of their own power, must be the destruction of all just feeling, and all natural sympathy, between those who exercise the power of government and those who are subject to it. The old channels of mutual regard and confidence are to be dried up, or cut off. Obedience can now be expected no longer than it is enforced. Instead of relying on the affections of the governed, sovereigns are to rely on the affections and friendship of other sovereigns. There are, in short, no longer to be nations. Princes and people no longer are to unite for interests common to them both. There is to be an end of all patriotism, as a distinct national feeling. Society is to be divided horizontally; all sovereigns above, and all subjects below; the former coalescing for their own security, and for the more certain subjection of the undistinguished multitude beneath. This, sir, is no picture, drawn by imagination. I have hardly used language stronger than that in which the authors of this new system have commented on their own

work. Mr. Chateaubriand, in his speech in the French Chamber of Deputies, in February last, declared, that he had a conference with the Emperor of Russia at Verona, in which that august sovereign uttered sentiments which appeared to him so precious, that he immediately hastened home, and wrote them down while yet fresh in his recollection. "*The Emperor declared*," said he, "*that there can no longer be such a thing as an English, French, Russian, Prussian, or Austrian policy: there is henceforth but one policy, which, for the safety of all, should be adopted both by people and kings. It was for me first to show myself convinced of the principles upon which I founded the alliance; an occasion offered itself; the rising in Greece. Nothing certainly could occur more for my interests, for the interests of my people; nothing more acceptable to my country, than a religious war in Turkey: but I have thought I perceived in the troubles of the Morea, the sign of revolution, and I have held back. Providence has not put under my command* 800,000 *soldiers, to satisfy my ambition, but to protect religion, morality, and justice, and to secure the prevalence of those principles of order on which human society rests. It may well be permitted that kings may have public alliances to defend themselves against secret enemies.*"

These, sir, are the words which the French minister thought so important as that they deserved to be recorded; and I, too, sir, am of the same opinion. But, if it be true that there is hereafter to be neither a Russian policy, nor a Prussian policy, nor an Austrian policy, nor a French policy, nor even, which yet I will not believe, an English policy; there will be, I trust in God, an *American* policy. If the authority of all these governments be hereafter to be mixed and blended, and to flow in one augmented current of prerogative, over the face of Europe, sweeping away all resistance in its course, it will yet remain for us to secure our own happiness, by the preservation of our own principles; which I hope we shall have the manliness to express on all proper occasions, and the spirit to defend in every extremity. The end and scope of this amalgamated policy is neither more nor less than this:—to interfere, *by force*, for any government, against any people who may resist it. Be the state of the people what it may, they shall not rise; be the government what it will, it shall not be opposed. The practical commentary has corresponded with the plain language of the text. Look at Spain, and at Greece. If men may not resist the Spanish inquisition, and the Turkish cimeter, what is there to which humanity must not submit? Stronger cases can never arise. Is it not proper for us, at all times —is it not our duty, at this time, to come forth, and deny, and condemn, these monstrous principles. Where, but here, and in one other place, are they likely to be resisted? They are advanced with equal coolness and boldness; and they are supported by immense power. The timid will shrink and give way—and many of the brave may be compelled to yield to force. Human liberty may yet, perhaps, be obliged to repose its principal hopes on the intelligence and the vigor of the Saxon race. As far as depends on us, at least, I trust those hopes will not be disappointed; and that, to the extent which may consist with our own settled, pacific policy, our opinions and sentiments may be brought to act, on the right side, and to the right end, on an occasion which is, in truth, nothing less than a mo-

mentous question between an intelligent age, full of knowledge, thirsting for improvement, and quickened by a thousand impulses, on one side, and the most arbitrary pretensions, sustained by unprecedented power, on the other.

This asserted right of forcible intervention, in the affairs of other nations, is in open violation of the public law of the world. Who has authorised these learned doctors of Troppau, to establish new articles in this code? Whence are their diplomas? Is the whole world expected to acquiesce in principles, which entirely subvert the independence of nations? On the basis of this independence has been reared the beautiful fabric of international law. On the principle of this independence, Europe has seen a family of nations, flourishing within its limits, the small among the large, protected not always by power, but by a principle above power, by a sense of propriety and justice. On this principle the great commonwealth of civilized states has been hitherto upheld. There have been occasional departures, or violations, and always disastrous, as in the case of Poland; but, in general, the harmony of the system has been wonderfully preserved. In the production and preservation of this sense of justice, this predominating principle, the Christian religion has acted a main part. Christianity and civilisation have labored together; it seems, indeed, to be a law of our human condition, that they can live and flourish only together. From their blended influence has arisen that delightful spectacle of the prevalence of reason and principle, over power and interest, so well described by one who was an honor to the age—

> "And sovereign *Law*, the *world's* collected will,
> O'er thrones and globes elate,
> Sits Empress—crowning good, repressing ill:
> Smit by her sacred frown,
> The fiend, *Discretion*, like a vapor, sinks,
> And e'en the all-dazzling crown
> Hides his faint rays, and at her bidding shrinks."

But this vision is past. While the teachers of Laybach give the rule, there will be no law but the law of the strongest.

It may now be required of me to show what interest *we* have, in resisting this new system. What is it to *us*, it may be asked, upon what principles, or what pretences, the European governments assert a right of interfering in the affairs of their neighbours? The thunder, it may be said, rolls at a distance. The wide Atlantic is between us and danger; and, however others may suffer, *we* shall remain safe.

I think it a sufficient answer to this, to say, that we are one of the nations; that we have an interest, therefore, in the preservation of that system of national law and national intercourse, which has heretofore subsisted, so beneficially for all. Our system of government, it should also be remembered, is, throughout, founded on principles utterly hostile to the new code; and, if we remain undisturbed by its operation, we shall owe our security, either to our situation or our spirit. The enterprising character of the age, our own active commercial spirit, the great increase which has taken place in the intercourse between civilized and commercial states,

have necessarily connected us with the nations of the earth, and given us a high concern in the preservation of those salutary principles, upon which that intercourse is founded. We have as clear an interest in international law, as individuals have in the laws of society.

But, apart from the soundness of the policy, on the ground of direct interest, we have, sir, a duty, connected with this subject, which, I trust, we are willing to perform. What do *we* not owe to the cause of civil and religious liberty? to the principle of lawful resistance? to the principle that society has a right to partake in its own government? As the leading Republic of the world, living and breathing in these principles, and advanced, by their operation, with unequalled rapidity, in our career, shall we give *our* consent to bring them into disrepute and disgrace? It is neither ostentation nor boasting, to say, that there lie before this country, in immediate prospect, a great extent and height of power. We are borne along towards this, without effort, and not always even with a full knowledge of the rapidity of our own motion. Circumstances which never combined before, have cooperated in our favor, and a mighty current is setting us forward, which we could not resist, even if we would, and which, while we would stop to make an observation, and take the sun, has set us, at the end of the operation, far in advance of the place where we commenced it. Does it not become us, then, is it not a duty imposed on us, to give our weight to the side of liberty and justice—to let mankind know that we are not tired of our own institutions—and to protest against the asserted power of altering, at pleasure, the law of the civilized world?

But, whatever we do, in this respect, it becomes us to do upon clear and consistent principles. There is an important topic in the Message, to which I have yet hardly alluded. I mean the rumored combination of the European continental sovereigns, against the new established free states of South America. Whatever position this government may take on that subject, I trust it will be one which can be defended, on known and acknowledged grounds of right. The near approach, or the remote distance of danger, may affect policy, but cannot change principle. The same reason that would authorise us to protest against unwarrantable combinations to interfere between Spain and her former colonies, would authorise us equally to protest, if the same combination were directed against the smallest state in Europe, although our duty to ourselves, our policy, and wisdom, might indicate very different courses, as fit to be pursued by us in the two cases. We shall not, I trust, act upon the notion of dividing the world with the Holy Alliance, and complain of nothing done by them in their hemisphere, if they will not interfere with ours. At least this would not be such a course of policy as I could recommend or support. We have not offended, and, I hope, we do not intend to offend, in regard to South America, against any principle of national independence or of public law. We have done nothing, we shall do nothing, that we need to hush up or to compromise, by forbearing to express our sympathy for the cause of the Greeks, or our opinion of the course which other governments have adopted in regard to them.

It may, in the next place, be asked, perhaps, supposing all this to be true, what can *we* do? Are we to go to war? Are we to interfere in the Greek cause, or any other European cause? Are we to endanger our pacific relations?—No, certainly not. What, then, the question recurs, remains for *us*? If we will not endanger our own peace; if we will neither furnish armies, nor navies, to the cause which we think the just one, what is there within *our* power?

Sir, this reasoning mistakes the age. The time has been, indeed, when fleets, and armies, and subsidies, were the principal reliances even in the best cause. But, happily for mankind, there has arrived a great change in this respect. Moral causes come into consideration, in proportion as the progress of knowledge is advanced; and the *public opinion* of the civilized world is rapidly gaining an ascendency over mere brutal force. It is already able to oppose the most formidable obstruction to the progress of injustice and oppression; and, as it grows more intelligent and more intense, it will be more and more formidable. It may be silenced by military power, but it cannot be conquered. It is elastic, irrepressible, and invulnerable to the weapons of ordinary warfare. It is that impassable, unex tinguishable enemy of mere violence and arbitrary rule, which, like Milton's angels,

> "Vital in every part,
> Cannot, but by annihilating, die."

Until this be propitiated or satisfied, it is vain for power to talk either of triumphs or of repose. No matter what fields are desolated, what fortresses surrendered, what armies subdued, or what provinces overrun. In the history of the year that has passed by us, and in the instance of unhappy Spain, we have seen the vanity of all triumphs, in a cause which violates the general sense of justice of the civilized world. It is nothing, that the troops of France have passed from the Pyrenees to Cadiz; it is nothing that an unhappy and prostrate nation has fallen before them; it is nothing that arrests, and confiscation, and execution, sweep away the little remnant of national resistance. There is an enemy that still exists to check the glory of these triumphs. It follows the conqueror back to the very scene of his ovations; it calls upon him to take notice that Europe, though silent, is yet indignant; it shows him that the sceptre of his victory is a barren sceptre; that it shall confer neither joy nor honor, but shall moulder to dry ashes in his grasp. In the midst of his exultation, it pierces his ear with the cry of injured justice, it denounces against him the indignation of an enlightened and civilized age; it turns to bitterness the cup of his rejoicing, and wounds him with the sting which belongs to the consciousness of having outraged the opinion of mankind.

In my own opinion, sir, the Spanish nation is now nearer, not only in point of time, but in point of circumstance, to the acquisition of a regulated government, than at the moment of the French invasion. Nations must, no doubt, undergo these trials in their progress to the establishment of free institutions. The very trials benefit them, and render them more capable both of obtaining and of enjoying the object which they seek.

I shall not detain the Committee, sir, by laying before it any statistical, geographical, or commercial account of Greece. I have no knowledge on these subjects, which is not common to all. It is universally admitted, that, within the last thirty or forty years, the condition of Greece has been greatly improved. Her marine is at present respectable, containing the best sailors in the Mediterranean, better even, in that sea, than our own, as more accustomed to the long quarantines, and other regulations which prevail in its ports. The number of her seamen has been estimated as high as 50,000, but I suppose that estimate must be much too large. They have probably 150,000 tons of shipping. It is not easy to state an accurate account of Grecian population. The Turkish government does not trouble itself with any of the calculations of political economy, and there has never been such a thing as an accurate census, probably, in any part of the Turkish empire. In the absence of all official information, private opinions widely differ. By the tables which have been communicated, it would seem that there are 2,400,000 Greeks in Greece proper and the Islands; an amount, as I am inclined to think, somewhat overrated. There are, probably, in the whole of European Turkey, 5,000,000 Greeks, and 2,000,000 more in the Asiatic dominions of that power. The moral and intellectual progress of this numerous population, under the horrible oppression which crushes it, has been such as may well excite regard. Slaves, under barbarous masters, the Greeks have still aspired after the blessings of knowledge and civilisation. Before the breaking out of the present revolution, they had established schools, and colleges, and libraries, and the press. Wherever, as in Scio, owing to particular circumstances, the weight of oppression was mitigated, the natural vivacity of the Greeks, and their aptitude for the arts, were discovered. Though certainly not on an equality with the civilized and Christian states of Europe, and how is it possible under such oppression as they endured that they should be? they yet furnished a striking contrast with their Tartar masters. It has been well said, that it is not easy to form a just conception of the nature of the despotism exercised over them. Conquest and subjugation, as known among European states, are inadequate modes of expression by which to denote the dominion of the Turks A conquest, in the civilized world, is generally no more than an acquisition of a new dominion to the conquering country. It does not imply a never-ending bondage imposed upon the conquered, a perpetual mark, and opprobrious distinction between them and their masters; a bitter and unending persecution of their religion; an habitual violation of their rights of person and property, and the unrestrained indulgence towards them, of every passion which belongs to the character of a barbarous soldiery. Yet, such is the state of Greece. The Ottoman power over them, obtained originally by the sword, is constantly preserved by the same means. Wherever it exists, it is a mere military power. The religious and civil code of the state, being both fixed in the Alcoran, and equally the object of an ignorant and furious faith, have been found equally incapable of change. "The Turk," it has been said, "has been *encamped* in Europe for four centuries." He has hardly any more participation

in European manners, knowledge, and arts, than when he crossed the Bosphorus. But this is not the worst of it. The power of the empire is fallen into anarchy, and as the principle which belongs to the head belongs also to the parts, there are as many despots as there are pachas, beys, and visiers. Wars are almost perpetual, between the sultan and some rebellious governor of a province; and in the conflict of these despotisms, the people are necessarily ground between the upper and the nether millstone. In short, the Christian subjects of the sublime Porte, feel daily all the miseries which flow from despotism, from anarchy, from slavery, and from religious persecution. If anything yet remains to heighten such a picture, let it be added, that every office in the government is not only actually, but professedly, venal;—the pachalics, the visierates, the cadiships, and whatsoever other denomination may denote the depositary of power. In the whole world, sir, there is no such oppression *felt*, as by the Christian Greeks. In various parts of India, to be sure, the government is bad enough; but then it is the government of barbarians over barbarians, and the *feeling* of oppression is, of course, not so keen. There the oppressed are perhaps not better than their oppressors; but in the case of Greece, there are millions of Christian men, not without knowledge, not without refinement, not without a strong thirst for all the pleasures of civilized life, trampled into the very earth, century after century, by a pillaging, savage, relentless soldiery. Sir, the case is unique. There exists, and has existed, nothing like it. The world has no such misery to show; there is no case in which Christian communities can be called upon, with such emphasis of appeal.

But I have said enough, Mr. Chairman, indeed I need have said nothing, to satisfy the House, that it must be some new combination of circumstances, or new views of policy in the cabinets of Europe, which have caused this interesting struggle not merely to be regarded with indifference, but to be marked with opprobrium. The very statement of the case, as a contest between the Turks and Greeks, sufficiently indicates what must be the feeling of every individual, and every government, that is not biassed by a particular interest, or a particular feeling, to disregard the dictates of justice and humanity.

And now, sir, what has been the conduct pursued by the Allied Powers, in regard to this contest? When the revolution broke out, the sovereigns were in Congress at Laybach; and the papers of that assembly sufficiently manifest their sentiments. They proclaimed their abhorrence of those "criminal combinations which had been formed in the eastern parts of Europe;" and, although it is possible that this denunciation was aimed, more particularly, at the disturbances in the provinces of Wallachia and Moldavia, yet no exception is made, from its general terms, in favor of those events in Greece, which were properly the commencement of her revolution, and which could not but be well known at Laybach, before the date of these declarations. Now it must be remembered, that Russia was a leading party in this denunciation of the efforts of the Greeks to achieve their liberation; and it cannot but be expected by Russia that the world shall also remember what part she herself has here-

tofore acted, in the same concern. It is notorious, that within the last half century she has again and again, excited the Greeks to rebellion against the Porte, and that she has constantly kept alive in them the hope that she would, one day, by her own great power, break the yoke of their oppressor. Indeed, the earnest attention with which Russia has regarded Greece, goes much farther back than to the time I have mentioned. Ivan the third, in 1482, having espoused a Grecian princess, heiress of the last Greek emperor, discarded *St. George* from the Russian arms, and adopted in its stead the *Greek two-headed black eagle*, which has continued in the Russian arms to the present day. In virtue of the same marriage, the Russian princes claimed the Greek throne as their inheritance.

Under Peter the Great, the policy of Russia developed itself more fully. In 1696, he rendered himself master of Azoph, and in 1698, obtained the right to pass the Dardanelles, and to maintain, by that route, commercial intercourse with the Mediterranean. He had emissaries throughout Greece, and particularly applied himself to gain the clergy. He adopted the *Labarum* of Constantine, "*In hoc signo vinces;*" and medals were struck, with the inscription, "*Petrus I. Russo-Græcorum Imperator.*" In whatever new direction the principles of the Holy Alliance may now lead the politics of Russia, or whatever course she may suppose Christianity now prescribes to her, in regard to the Greek cause, the time has been when she professed to be contending for that cause, as identified with Christianity. The white banner under which the soldiers of Peter the first usually fought, bore, as its inscription, "*In the name of the Prince, and for our country.*" Relying on the aid of the Greeks, in his war with the Porte, he changed the white flag to red, and displayed on it the words, "*In the name of God, and for Christianity.*" The unfortunate issue of this war is well known. Though Anne and Elizabeth, the successors of Peter, did not possess his active character, they kept up a constant communication with Greece, and held out hopes of restoring the Greek empire. Catharine the second, as is well known, excited a general revolt in 1769. A Russian fleet appeared in the Mediterranean, and a Russian army was landed in the Morea. The Greeks in the end were disgusted by being required to take an oath of allegiance to Russia, and the empress was disgusted because they refused to take it. In 1774, peace was signed between Russia and the Porte, and the Greeks of the Morea were left to their fate. By this treaty the Porte acknowledged the independence of the khan of the Crimea; a preliminary step to the acquisition of that country by Russia. It is not unworthy of remark, as a circumstance which distinguished this from most other diplomatic transactions, that it conceded the right to the cabinet of St. Petersburg, of intervention in the interior affairs of Turkey, in regard to whatever concerned the religion of the Greeks. The cruelties and massacres that happened to the Greeks after the peace between Russia and the Porte, notwithstanding the general pardon which had been stipulated for them, need not now to be recited. Instead of retracing the deplorable picture, it is enough to say, that in this respect the past is justly reflected in the present. The empress soon after invaded and conquered the Crimea, and on one

of the gates of Kerson, its capital, caused to be inscribed, "*The road to Bysantium.*" The present Emperor, on his accession to the throne, manifested an intention to adopt the policy of Catharine the II. as his own, and the world has not been right, in all its suspicions, if a project for the partition of Turkey did not form a part of the negotiations of Napoleon and Alexander at Tilsit.

All this course of policy seems suddenly to be changed. Turkey is no longer regarded, it would appear, as an object of partition or acquisition, and Greek revolts have, all at once, become, according to the declaration of Laybach, "criminal combinations." The recent congress at Verona exceeded its predecessor at Laybach, in its denunciations of the Greek struggle. In the circular of the 14th of December, 1822, it declared the Grecian resistance to the Turkish power to be rash and culpable, and lamented that "the firebrand of rebellion had been thrown into the Ottoman empire." This rebuke and crimination, we know to have proceeded on those settled principles of conduct, which the continental powers had prescribed for themselves. The sovereigns saw, as well as others, the real condition of the Greeks; they knew, as well as others, that it was most natural and most justifiable, that they should endeavour, at whatever hazard, to change that condition. They knew, that they, themselves, or at least one of them, had more than once urged the Greeks to similar efforts; that they, themselves, had thrown the same firebrand into the midst of the Ottoman empire. And yet, so much does it seem to be their fixed object to discountenance whatsoever threatens to disturb the actual government of any country, that, Christians as they were, and allied as they professed to be, for purposes most important to human happiness and religion, they have not hesitated to declare to the world, that they have wholly forborne to exercise any compassion to the Greeks, simply because they thought that they saw, in the struggles of the Morea, the sign of revolution. This, then, is coming to a plain, practical result. The Grecian revolution has been discouraged, discountenanced, and denounced, for no reason but because *it is a* revolution. Independent of all inquiry into the reasonableness of its causes, or the enormity of the oppression which produced it; regardless of the peculiar claims which Greece possesses upon the civilized world; and regardless of what has been their own conduct towards her for a century; regardless of the interest of the Christian religion, the sovereigns at Verona seized upon the case of the Greek revolution, as one above all others calculated to illustrate the fixed principles of their policy. The abominable rule of the Porte on one side, the valor and the sufferings of the Christian Greeks on the other, furnished a case likely to convince even an incredulous world of the sincerity of the professions of the Allied Powers. They embraced the occasion, with apparent ardor; and the world, I trust, is satisfied.

We see here, Mr. Chairman, the direct and actual application of that system which I have attempted to describe. We see it in the very case of Greece. We learn, authentically and indisputably, that the Allied Powers, holding that all changes in legislation and administration ought to proceed from kings alone, were wholly inexorable to the sufferings of the Greeks, and wholly hostile to their

success Now it is upon this practical result of the principle of the continental powers, that I wish this House to intimate its opinion. The great question is a question of principle. Greece is only the signal instance of the application of that principle. If the principle be right, if we esteem it conformable to the law of nations, if we have nothing to say against it, or if we deem ourselves unfit to express an opinion on the subject, then, of course, no resolution ought to pass. If, on the other hand, we see in the declarations of the Allied Powers, principles not only utterly hostile to our own free institutions, but hostile also to the independence of all nations, and altogether opposed to the improvement of the condition of human nature; if, in the instance before us, we see a most striking exposition and application of those principles, and if we deem our own opinions to be entitled to any weight in the estimation of mankind; then, I think, it is our duty to adopt some such measure as the pro posed resolution.

It is worthy of observation, sir, that as early as July, 1821, Baron Strogonoff, the Russian minister at Constantinople, represented to the Porte, that, if the undistinguished massacres of the Greeks, both of such as were in open resistance, and of those who remained patient in their submission, were continued, and should become a settled habit, they would give just cause of war against the Porte to all Christian states. This was in 1821. It was followed, early in the next year, by that indescribable enormity, that appalling monument of barbarian cruelty, the destruction of Scio; a scene I shall not attempt to describe; a scene from which human nature shrinks shuddering away; a scene having hardly a parallel in the history of fallen man. This scene, too, was quickly followed by the massacres in Cyprus; and all these things were perfectly known to the Christian powers assembled at Verona. Yet these powers, instead of acting upon the case supposed by Baron Strogonoff, and which, one would think, had been then fully made out; instead of being moved by any compassion for the sufferings of the Greeks; these powers, these Christian powers, rebuke their gallantry, and insult their sufferings, by accusing them of "throwing a firebrand into the Ottoman empire."

Such, sir, appear to me to be the principles on which the conti nental powers of Europe have agreed hereafter to act; and this, an eminent instance of the application of those principles.

I shall not detain the Committee, Mr. Chairman, by any attempt to recite the events of the Greek struggle, up to the present time Its origin may be found, doubtless, in that improved state of knowledge, which, for some years, has been gradually taking place in that country. The emancipation of the Greeks has been a subject frequently discussed in modern times. They themselves are represented as having a vivid remembrance of the distinction of their ancestors, not unmixed with an indignant feeling, that civilized and Christian Europe should not, ere now, have aided them in breaking their intolerable fetters.

In 1816, a society was founded in Vienna, for the encouragement of Grecian literature. It was connected with a similar institution at Athens, and another in Thessaly, called the "Gymnasium of

Mount Pelion." The treasury and general office of the institution was established at Munich. No political object was avowed by these institutions, probably none contemplated. Still, however, they have, no doubt, had their effect in hastening that condition of things, in which the Greeks felt competent to the establishment of their independence. Many young men have been, for years, annually sent to the universities in the western states of Europe for their education; and, after the general pacification of Europe, many military men, discharged from other employment, were ready to enter even into so unpromising a service as that of the revolutionary Greeks.

In 1820, war commenced between the Porte and Ali, the well known pacha of Albania. Differences existed also with Persia, and with Russia. In this state of things, at the beginning of 1821, an insurrection appears to have broken out in Moldavia, under the direction of Alexander Ypsilanti, a well educated soldier, who had been major-general in the Russian service. From his character, and the number of those who seemed disposed to join him, he was supposed to be countenanced by the court of St. Petersburg. This, however, was a great mistake, which the emperor, then at Laybach, took an early opportunity to rectify. The Porte, it would seem, however, alarmed at these occurrences in the northern provinces, caused search to be made of all vessels entering the Black Sea, lest arms or other military means should be sent in that manner to the insurgents. This proved inconvenient to the commerce of Russia, and caused some unsatisfactory correspondence between the two powers. It may be worthy of remark, as an exhibition of national character, that, agitated by these appearances of intestine commotion, the sultan issued a proclamation, calling on all true mussulmans to renounce the pleasures of social life, to prepare arms and horses, and to return to the manner of their ancestors, the life of the plains. The Turk seems to have thought that he had, at last, caught something of the dangerous contagion of European civilisation, and that it was necessary to reform his habits, by recurring to the original manners of military roving barbarians.

It was about this time, that is to say, at the commencement of 1821, that the Revolution burst out in various parts of Greece and the Isles. Circumstances, certainly, were not unfavorable, as one portion of the Turkish army was employed in the war against Ali Pacha in Albania, and another part in the provinces north of the Danube. The Greeks soon possessed themselves of the open country of the Morea, and drove their enemy into the fortresses. Of these, that of Tripolitza, with the city, fell into the hands of the Greeks, in the course of the summer. Having after these first movements obtained time to breathe, it became, of course, an early object to establish a government. For this purpose delegates of the people assembled, under that name which describes the assembly in which we ourselves sit, that name which "freed the Atlantic," a *Congress*. A writer, who undertakes to render to the civilized world that service which was once performed by Edmund Burke, I mean the compiler of the English Annual Register, asks, *by what authority* this assembly could call itself a *Congress*. Simply, sir, by the same authority, by which the people of the United States

have given the same name to their own legislature. We, at least, should be naturally inclined to think, not only as far as names, but things also, are concerned, that the Greeks could hardly have begun their revolution under better auspices; since they have endeavoured to render applicable to themselves the general principles of our form of government, as well as its name. This constitution went into operation at the commencement of the next year. In the meantime, the war with Ali Pacha was ended, he having surrendered, and being afterwards assassinated, by an instance of treachery and perfidy, which, if it had happened elsewhere than under the government of the Turks, would have deserved notice. The negotiation with Russia, too, took a turn unfavorable to the Greeks. The great point upon which Russia insisted, beside the abandonment of the measure of searching vessels bound to the Black Sea, was, that the Porte should withdraw its armies from the neighbourhood of the Russian frontiers; and the immediate consequence of this, when effected, was to add so much more to the disposable force, ready to be employed against the Greeks. These events seemed to have left the whole force of the Empire, at the commencement of 1822, in a condition to be employed against the Greek rebellion; and, accordingly, very many anticipated the immediate destruction of their cause. The event, however, was ordered otherwise. Where the greatest effort was made, it was met and defeated. Entering the Morea with an army which seemed capable of bearing down all resistance, the Turks were nevertheless defeated and driven back, and pursued beyond the isthmus, within which, as far as it appears, from that time to the present, they have not been able to set their foot.

It was in April, of this year, that the destruction of Scio took place. That island, a sort of appanage of the Sultana mother, enjoyed many privileges peculiar to itself. In a population of 130,000 or 140,000, it had no more than 2000 or 3000 Turks; indeed, by some accounts, not near as many. The absence of these ruffian masters, had, in some degree, allowed opportunity for the promotion of knowledge, the accumulation of wealth, and the general cultivation of society. Here was the seat of the modern Greek literature, here were libraries, printing presses, and other establishments, which indicate some advancement in refinement and knowledge. Certain of the inhabitants of Samos, it would seem, envious of this comparative happiness of Scio, landed upon the island, in an irregular multitude, for the purpose of compelling its inhabitants to make common cause with their countrymen against their oppressors. These, being joined by the peasantry, marched to the city, and drove the Turks into the castle. The Turkish fleet, lately reenforced from Egypt, happened to be in the neighbouring seas, and learning these events, landed a force on the island of 15,000 men There was nothing to resist such an army. These troops immediately entered the city, and began an indiscriminate massacre. The city was fired; and, in four days, the fire and the sword of the Turk, rendered the beautiful Scio a clotted mass of blood and ashes. The details are too shocking to be recited. Forty thousand women and children, unhappily saved from the general destruction, were

afterwards sold in the market of Smyrna, and sent off into distant and hopeless servitude. Even on the wharves of our own cities, it has been said, have been sold the utensils of those hearths which now exist no longer. Of the whole population which I have mentioned, not above 900 persons were left living upon the island. I will only repeat, sir, that these tragical scenes were as fully known at the Congress of Verona, as they are now known to us; and it is not too much to call on the powers that constituted that Congress, in the name of conscience, and in the name of humanity, to tell us, if there be nothing even in these unparalleled excesses of Turkish barbarity, to excite a sentiment of compassion; nothing which they regard as so objectionable as even the very idea of popular resistance to power.

The events of the year which has just passed by, as far as they have become known to us, have been even more favorable to the Greeks, than those of the year preceding. I omit all details, as being as well known to others as to myself. Suffice it to say, that with no other enemy to contend with, and no diversion of his force to other objects, the Porte has not been able to carry the war into the Morea; and that, by the last accounts, its armies were acting defensively in Thessaly. I pass over also the naval engagements of the Greeks, although that is a mode of warfare in which they are calculated to excel, and in which they have already performed actions of such distinguished skill and bravery, as would draw applause upon the best mariners in the world. The present state of the war would seem to be, that the Greeks possess the whole of the Morea, with the exception of the three fortresses of Patras, Coron and Modon; all Candia, but one fortress; and most of the other islands. They possess the citadel of Athens, Missolunghi, and several other places in Livadia. They have been able to act on the offensive and to carry the war beyond the isthmus. There is no reason to believe their marine is weakened; probably, on the other hand, it is strengthened. But, what is most of all important, they have obtained time and experience. They have awakened a sympathy throughout Europe and throughout America; and they have formed a government which seems suited to the emer gency of their condition.

Sir, they have done much. It would be great injustice to compare their achievements with our own. We began our revolution, already possessed of government, and, comparatively, of civil liberty. Our ancestors had, for centuries, been accustomed in a great measure to govern themselves. They were well acquainted with popular elections and legislative assemblies, and the general principles and practice of free governments. They had little else to do than to throw off the paramount authority of the parent state. Enough was still left, both of law and of organization, to conduct society in its accustomed course, and to unite men together for a common object. The Greeks, of course, could act with little concert at the beginning; they were unaccustomed to the exercise of power, without experience, with limited knowledge, without aid, and surrounded by nations, which, whatever claims the Greeks might seem to have had upon them, have afforded them nothing but discouragement and

reproach. They have held out, however, for three campaigns; and that, at least, is something. Constantinople and the northern provinces have sent forth thousands of troops;—they have been defeated. Tripoli, and Algiers, and Egypt, have contributed their marine contingents;—they have not kept the ocean. Hordes of Tartars have crossed the Bosphorus;—they have died where the Persians died. The powerful monarchies in the neighbourhood have denounced their cause, and admonished them to abandon it, and submit to their fate. They have answered them, that, although two hundred thousand of their countrymen have offered up their lives, there yet remain lives to offer; and that it is the determination of *all*, "yes, of ALL," to persevere until they shall have established their liberty, or until the power of their oppressors shall have relieved them from the burden of existence.

It may now be asked, perhaps, whether the expression of our own sympathy, and that of the country, may do them good? I hope it may. It may give them courage and spirit, it may assure them of public regard, teach them that they are not wholly forgotten by the civilized world, and inspire them with constancy in the pursuit of their great end. At any rate, sir, it appears to me, that the measure which I have proposed is due to our own character, and called for by our own duty. When we shall have discharged that duty, we may leave the rest to the disposition of Providence.

I do not see how it can be doubted, that this measure is entirely *pacific*. I profess my inability to perceive that it has any possible tendency to involve our neutral relations. If the resolution pass, it is not, necessarily, to be immediately acted on. It will not be acted on at all, unless, in the opinion of the President, a proper and safe occasion for acting upon it shall arise. If we adopt the resolution to-day, our relations with every foreign state will be to-morrow precisely what they now are. The resolution will be sufficient to express our sentiments on the subjects to which I have adverted. Useful to that purpose, it can be mischievous to no purpose. If the topic were properly introduced into the Message, it cannot be improperly introduced into discussion in this House. If it were proper, which no one doubts, for the President to express his opinions upon it, it cannot, I think, be improper for us to express ours. The only certain effect of this resolution is to express, in a form usual in bodies constituted like this, our approbation of the general sentiment of the Message. Do we wish to withhold that approbation? *The Resolution confers on the President no new power, nor does it enjoin on him the exercise of any new duty; nor does it hasten him in the discharge of any existing duty.*

I cannot imagine that this resolution can add anything to those excitements which it has been supposed, I think very causelessly, might possibly provoke the Turkish government to acts of hostility There is already the Message, expressing the hope of success to the Greeks, and disaster to the Turks, in a much stronger manner than is to be implied from the terms of this resolution. There is the correspondence between the Secretary of State and the Greek Agent in London, already made public, in which similar wishes are expressed, and a continuance of the correspondence apparently in-

vited. I might add to this, the unexampled burst of feeling which this cause has called forth from all classes of society, and the notorious fact of pecuniary contributions made throughout the country for its aid and advancement. After all this, whoever can see cause of danger to our pacific relations from the adoption of this resolution, has a keener vision than I can pretend to. Sir, there is no augmented danger; there is *no danger*. The question comes at last to this, whether, on a subject of this sort, this House holds an opinion which is worthy to be expressed?

Even suppose, sir, an Agent or Commissioner were to be immediately sent,—a measure which I myself believe to be the proper one,—there is no breach of neutrality, nor any just cause of offence. Such an agent, of course, would not be accredited; he would not be a public minister. The object would be inquiry and information; inquiry, which we have a right to make; information, which we are interested to possess. If a dismemberment of the Turkish empire be taking place, or has already taken place; if a new state be rising, or be already risen, in the Mediterranean, who can doubt, that, without any breach of neutrality, we may inform ourselves of these events, for the government of our own concerns?

The Greeks have declared the Turkish coasts in a state of blockade; may we not inform ourselves whether this blockade be *nominal* or *real*? And, of course, whether it shall be regarded or disregarded? The greater our trade may happen to be with Smyrna, a consideration which seems to have alarmed some gentlemen, the greater is the reason, in my opinion, why we should seek to be accurately informed of those events which may affect its safety.

It seems to me impossible, therefore, for any reasonable man to imagine, that this resolution can expose us to the resentment of the sublime Porte.

As little reason is there for fearing its consequences upon the conduct of the Allied Powers. They may, very naturally, dislike our sentiments upon the subject of the Greek Revolution; but what those sentiments are, they will much more explicitly learn in the President's Message than in this resolution. They might, indeed, prefer that we should express no dissent upon the doctrines which they have avowed, and the application which they have made of those doctrines to the case of Greece. But I trust we are not disposed to leave them in any doubt as to our sentiments upon these important subjects. They have expressed their opinions, and do not call that expression of opinion, *an interference;* in which respect they are right, as the expression of opinion, in such cases, is not such an *interference* as would justify the Greeks in considering the powers as at war with them. For the same reason, any expression which we may make, of different principles and different sympathies, is no *interference.* No one would call the President's Message an *interference;* and yet it is much stronger, in that respect, than this resolution. If either of them could be construed to be an *interference*, no doubt it would be improper, at least it would be so, according to my view of the subject; for the very thing which I have attempted to resist in the course of these observations, is the right of foreign interference. But neither the Message nor the resolution has that character. There is not a

power in Europe that can suppose, that, in expressing our opinions on this occasion, we are governed by any desire of aggrandizing ourselves, or of injuring others. We do no more than to maintain those established principles, in which we have an interest in common with other nations, and to resist the introduction of new principles and new rules, calculated to destroy the relative independence of states, and particularly hostile to the whole fabric of our own government.

I close, then, sir, with repeating, that the object of this resolution is, to avail ourselves of the interesting occasion of the Greek revolution, to make our protest against the doctrines of the Allied Powers; both as they are laid down in principle, and as they are applied in practice.

I think it right too, sir, not to be unseasonable in the expression of our regard, and, as far as that goes, in a ministration of our consolation, to a long oppressed and now struggling people. I am not of those who would in the hour of utmost peril, withhold such encouragement as might be properly and lawfully given, and when the crisis should be past, overwhelm the rescued sufferer with kindness and caresses. The Greeks address the civilized world with a pathos, not easy to be resisted. They invoke our favor by more moving considerations than can well belong to the condition of any other people. They stretch out their arms to the Christian communities of the earth, beseeching them, by a generous recollection of their ancestors, by the consideration of their own desolated and ruined cities and villages, by their wives and children, sold into an accursed slavery, by their own blood, which they seem willing to pour out like water, by the common faith, and in the Name, which unites all Christians, that they would extend to them, at least some token of compassionate regard.

SPEECH

UPON THE TARIFF; DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, APRIL, 1824.

Mr. Chairman,—I will avail myself of the present occasion to make some remarks on certain principles and opinions which have been recently advanced, and on those considerations which, in my judgment, ought to govern us in deciding upon the several and respective parts of this very important and complex measure. I can truly say that this is a painful duty. I deeply regret the necessity, which is likely to be imposed upon me, of giving a general affirmative or negative vote on the whole of the Bill. I cannot but think this mode of proceeding liable to great objections. It exposes both those who support, and those who oppose, the measure, to very unjust and injurious misapprehensions. There may be good reasons for favoring some of the provisions of the Bill, and equally strong reasons for opposing others; and these provisions do not stand to each other in the relation of principal and incident. If that were the case, those who are in favor of the principal might forego their opinions upon incidental and subordinate provisions. But the Bill proposes enactments entirely distinct, and different from one another, in character and tendency. Some of its clauses are intended merely for revenue; and, of those which regard the protection of home manufactures, one part stands upon very different grounds from those of other parts. So that probably every gentleman who may ultimately support the bill will vote for much which his judgment does not approve; and those who oppose it will oppose something which they would very gladly support.

Being intrusted with the interests of a district highly commercial, and deeply interested in manufactures also, I wish to state my opinions on the present measure; not as on a whole, for it has no entire and homogeneous character; but as on a collection of different enactments, some of which meet my approbation, and some of which do not.

And allow me, sir, in the first place, to state my regret, if indeed I ought not to express a warmer sentiment, at the names, or designations, which Mr. Speaker has seen fit to adopt, for the purpose of describing the advocates and the opposers of the present Bill. It is a question, he says, between the friends of an "American policy,"

and those of a "foreign policy." This, sir, is an assumption which I take the liberty most directly to deny. Mr. Speaker certainly intended nothing invidious or derogatory to any part of the House by this mode of denominating friends and enemies. But there is power in names, and this manner of distinguishing those who favor and those who oppose particular measures, may lead to inferences to which no member of the House can submit. It may imply that there is a more exclusive and peculiar regard to American interests in one class of opinions than in another. Such an implication is to be resisted and repelled. Every member has a right to the presumption, that he pursues what he believes to be the interest of his country, with as sincere a zeal as any other member. I claim this in my own case; and, while I shall not, for any purpose of description, or convenient arrangement, use terms which may imply any disrespect to other men's opinions, much less any imputations of other men's motives, it is my duty to take care that the use of such terms by others be not, against the will of those who adopt them, made to produce a false impression. Indeed, sir, it is a little astonishing, if it seemed convenient to Mr. Speaker, for the purposes of distinction, to make use of the terms "American policy," and "foreign policy," that he should not have applied them in a manner precisely the reverse of that in which he has in fact used them. If names are thought necessary, it would be well enough, one would think, that the name should be, in some measure, descriptive of the thing; and since Mr. Speaker denominates the policy which he recommends "a new policy in this country;" since he speaks of the present measure as a new era in our legislation; since he professes to invite us to depart from our accustomed course, to instruct ourselves by the wisdom of others, and to adopt the policy of the most distinguished *foreign states*, one is a little curious to know with what propriety of speech this imitation of other nations is denominated an "American policy," while, on the contrary, a preference for our own established system, as it now actually exists, and always has existed, is called a "foreign policy." This favorite American policy is what America has never tried; and this odious foreign policy is what, as we are told, foreign states have never pursued. Sir, that is the truest American policy which shall most usefully employ American capital, and American labor, and best sustain the whole population. With me it is a fundamental axiom, it is interwoven with all my opinions, that the great interests of the country are united and inseparable; that agriculture, commerce, and manufactures, will prosper together, or languish together; and that all legislation is dangerous which proposes to benefit one of these without looking to consequences which may fall on the others.

Passing from this, sir, I am bound to say that Mr. Speaker began his able and impressive speech at the proper point of inquiry; I mean *the present state and condition of the country;* although I am so unfortunate, or rather although I am so happy, as to differ from him very widely in regard to that condition. I dissent entirely from the justice of that picture of distress which he has drawn. I have not seen the reality, and know not where it exists. Within my observation there is no cause for so gloomy and terrifying a representation. In

respect to the New England states, with the condition of which I am, of course, most acquainted, the present appears to me a period of very general prosperity. Not, indeed, a time for great profits and sudden acquisition; not a day of extraordinary activity and successful speculation. There is, no doubt, a considerable depression of prices, and, in some degree, a stagnation of business. But the case presented by Mr. Speaker was not one of *depression*, but of *distress;* of universal, pervading, intense distress, limited to no class, and to no place. We are represented as on the very verge and brink of national ruin. So far from acquiescing in these opinions, I believe there has been no period in which the general prosperity was better secured, or rested on a more solid foundation. As applicable to the Eastern states, I put this remark to their Representatives, and ask them if it is not true. When has there been a time in which the means of living have been more accessible and more abundant? when has labor been rewarded, I do not say with a larger, but with a more certain success? Profits, indeed, are low; in some pursuits of life, which it is not proposed to benefit, but to *burden*, by this Bill, very low. But still I am unacquainted with any proofs of extraordinary distress. What, indeed, are the general indications of the state of the country? There is no famine nor pestilence in the land, nor war, nor desolation. There is no writhing under the burden of taxation. The means of subsistence are abundant; and at the very moment when the miserable condition of the country is asserted, it is admitted that the wages of labor are high, in comparison with those of any other country. A country, then, enjoying a profound peace, a perfect civil liberty, with the means of subsistence cheap and abundant, with the reward of labor sure, and its wages higher than anywhere else, cannot be represented in gloom, melancholy, and distress, but by the effort of extraordinary powers of tragedy.

Even if, in judging of this question, we were to regard only those proofs to which we have been referred, we shall probably come to a conclusion somewhat different from that which has been drawn. Our exports, for example, although certainly less than in some years, were not, last year, so much below an average, formed upon the exports of a series of years, and putting those exports at a fixed value, as might be supposed. The exports of agricultural products, of animals, of the products of the forest, of the sea, together with gunpowder, spirits, and sundry unenumerated articles, amounted, in the several years, to the following sums, viz.

In 1790 - - - -	$ 27,716,152
1804 - - - -	33,842,316
1807 - - - -	38,465,854

Coming up, now, to our own times, and taking the exports of the years 1821, 1822, and 1823, of the same articles and products, at the same prices, they stand thus:

In 1821 - - - -	$ 45,643,175
1822 - - - -	48,782,295
1823 - - - -	55,863,491

Mr. Speaker has taken the very extraordinary year of 1803, and, adding to the exportation of that year, what he thinks ought to have

been a just augmentation, in proportion to the increase of our population, he swells the result to a magnitude, which, when compared with our actual exports, would exhibit a great deficiency. But is there any justice in this mode of calculation? In the first place, as before observed, the year 1803 was a year of extraordinary exportation. By reference to the accounts, that of the article of flour, for example, there was an export that year of 1,300,000 barrels; but the very next year it fell to 800,000, and the next year to 700,000. In the next place, there never was any reason to expect that the increase of our exports of agricultural products, would keep pace with the increase of our population. That would be against all experience. It is, indeed, most desirable, that there should be an augmented demand for the products of agriculture; but, nevertheless, the official returns of our exports do not show that absolute want of all foreign market, which has been so strongly stated.

But there are other means by which to judge of the general condition of the people. The quantity of the means of subsistence consumed; or, to make use of a phraseology better suited to the condition of our own people, the quantity of the comforts of life enjoyed, is one of those means. It so happens, indeed, that it is not so easy in this country, as elsewhere, to ascertain facts, of this sort, with accuracy. Where most of the articles of subsistence, and most of the comforts of life are taxed, there is, of course, great facility in ascertaining, from official statements, the amount of consumption. But, in this country, most fortunately, the government neither knows, nor is concerned to know, the annual consumption; and estimates can only be formed in another mode, and in reference only to a few articles. Of these articles, tea is one. Its use is not quite a luxury, and yet is something above the absolute necessaries of life. Its consumption, therefore, will be diminished in times of adversity, and augmented in times of prosperity. By deducting the annual export from the annual import, and taking a number of years together, we may arrive at a probable estimate of consumption. The average of eleven years, from 1790, to 1800, inclusive, will be found to be two millions and a half of pounds. From 1801 to 1812, inclusive, three millions seven hundred thousand; and the average of the last three years, to wit: 1821, 1822, and 1823, five millions and a half. Having made a just allowance for the increase of our numbers, we shall still find, I think, from these statements, that there is no distress which has limited our means of subsistence and enjoyment.

In forming an opinion of the degree of general prosperity, we may regard, likewise, the progress of internal improvements—the investment of capital in roads, bridges, and canals. All these prove a balance of income over expenditure; they are evidence that there is a surplus of profits, which the present generation is usefully vesting for the benefit of the next. It cannot be denied that, in this particular, the progress of the country is steady and rapid.

We may look, too, to the expenses of education. Are our Colleges deserted? Do fathers find themselves less able than usual to educate their children? It will be found, I imagine, that the amount paid for the purpose of education, is constantly increasing, and that the schools and colleges were never more full than at the present

moment. I may add that the endowment of public charities, the contributions to objects of general benevolence, whether foreign or domestic, the munificence of individuals towards whatever promises to benefit the community, are all so many proofs of national prosperity. And, finally, there is no defalcation of revenue, no pressure of taxation.

The general result, therefore, of a fair examination of the present condition of things, seems to me to be, that there is a considerable depression of prices, and curtailment of profit; and, in some parts of the country, it must be admitted, there is a great degree of *pecuniary* embarrassment, arising from the difficulty of paying debts which were contracted when prices were high. With these qualifications, the general state of the country may be said to be prosperous; and these are not sufficient to give to the whole face of affairs any appearance of general distress.

Supposing the evil, then, to be a depression of prices, and a partial pecuniary pressure, the next inquiry is into the causes of that evil; and it appears to me that there are several—and, in this respect, I think, too much has been imputed, by Mr. Speaker, to the single cause of the diminution of exports. Connected, as we are, with all the commercial nations of the world, and having observed great changes to take place elsewhere, we should consider whether the causes of those changes have not reached us, and whether we are not suffering by the operation of them, in common with others. Undoubtedly, there has been a great fall in the price of all commodities throughout the commercial world, in consequence of the restoration of a state of peace. When the Allies entered France in 1814, prices rose astonishingly fast, and very high. Colonial produce, for instance, in the ports of this country, as well as elsewhere, sprung up suddenly from the lowest to the highest extreme. A new and vast demand was created for the commodities of trade. These were the natural consequences of the great political changes which then took place in Europe.

We are to consider, too, that our own war created new demand, and that a government expenditure of 25,000,000, or 30,000,000, a year, had the usual effect of enhancing prices. We are obliged to add, that the paper issues of our Banks carried the same effect still further. A depreciated currency existed in a great part of the country; depreciated to such an extent as that, at one time, exchange between the centre and the north, was as high as 20 per cent. The Bank of the United States was instituted to correct this evil; but, for causes which it is not necessary now to enumerate, it did not for some years, bring back the currency of the country to a sound state. This depreciation of the circulating currency, was so much, of course, added to the nominal prices of commodities, and these prices thus unnaturally high, seemed, to those who looked only at the appearance, to indicate great prosperity. But such prosperity is more specious than real. It would have been better, probably, as the shock would have been less, if prices had fallen sooner. At length, however, they fell; and, as there is little doubt that certain events in Europe had an influence in determining the time at which this fall should take place, I will advert shortly to some of the principal of those events.

In May, 1819, the British House of Commons decided, by an unanimous vote, that the resumption of cash payments by the Bank of England, should not be deferred beyond the ensuing February. The restriction had been continued from time to time, and from year to year, Parliament always professing to look to the restoration of a specie currency, whenever it should be found practicable. Having been, in July, 1818, continued to July, 1819, it was understood that, in the interim, the important question of the time at which cash payments should be resumed, should be finally settled. In the latter part of the year '18, the circulation of the Bank had been greatly reduced, and a severe scarcity of money was felt in the London market. Such was the state of things in England. On the continent, other important events took place. The French Indemnity Loan had been negotiated in the summer of 1818, and the proportion of it belonging to Austria, Russia, and Prussia, had been sold. This created an unusual demand for gold and silver in these Eastern States of Europe. It has been stated, that the amount of the precious metals transmitted to Austria and Russia in that year, was at least twenty millions sterling. Other large sums were sent to Prussia and to Denmark. The effect of this sudden drain of specie, felt first at Paris, was communicated to Amsterdam and Hamburg, and all other commercial places in the north of Europe.

The paper system of England had certainly communicated an artificial value to property. It had encouraged speculation, and excited overtrading. When the shock therefore came, and this violent pressure for money acted at the same moment on the continent and in England, inflated and unnatural prices could be kept up no longer. A reduction took place, which has been estimated to have been at least equal to a fall of 30, if not 40 per cent. The depression was universal; and the change was felt in the United States severely, though not equally so in every part of them. There are those, I am aware, who maintain that the events to which I have alluded did not cause the great fall of prices; but that that fall was natural and inevitable, from the previously existing state of things, the abundance of commodities, and the want of demand. But that would only prove that the effect was produced in another way, rather than by another cause. If these great and sudden calls for money did not reduce prices, but prices fell, as of themselves, to their natural state, still the result is the same; for we perceive that after these new calls for money, prices could not be kept longer at their unnatural height.

About the time of these foreign events, our own bank system underwent a change; and all these causes, in my view of the subject, concurred to produce the great shock which took place in our commercial cities, and through many parts of the country. The year 1819 was a year of numerous failures, and very considerable distress, and would have furnished far better grounds than exist at present, for that gloomy representation of our condition which has been presented. Mr Speaker has alluded to the strong inclination which exists, or has existed, in various parts of the country to issue paper money, as a proof of great existing difficulties. I regard it rather as a very productive cause of those difficulties; and the committee will not fail to observe, that there is, at this moment, much the loudest complaint

of distress precisely where there has been the greatest attempt to relieve it by systems of paper credit. And, on the other hand, content, prosperity, and happiness, are most observable in those parts of the country, where there has been the least endeavour to administer relief by law. In truth, nothing is so baneful, so utterly ruinous to all true industry, as interfering with the legal value of money, or attempting to raise artificial standards to supply its place. Such remedies suit well the spirit of extravagant speculation, but they sap the very foundation of all honest acquisition. By weakening the security of property, they take away all motive for exertion. Their effect is to transfer property. Whenever a debt is allowed to be paid by anything less valuable than the legal currency in respect to which it was contracted, the difference, between the value of the paper given in payment and the legal currency, is precisely so much property taken from one man and given to another, by legislative enactment. When we talk, therefore, of protecting industry, let us remember that the first measure for that end, is to secure it in its earnings; to assure it that it shall receive its own. Before we invent new modes of raising prices, let us take care that existing prices are not rendered wholly unavailable, by making them capable of being paid in depreciated paper. I regard, sir, this issue of irredeemable paper as the most prominent and deplorable cause of whatever pressure still exists in the country; and, further, I would put the question to the members of this Committee, whether it is not from that part of the people who have tried this paper system, and tried it to their cost, that this Bill receives the most earnest support? And I cannot forbear to ask, further, whether this support does not proceed rather from a general feeling of uneasiness under the present condition of things, than from the clear perception of any benefit which the measure itself can confer? Is not all expectation of advantage centred in a sort of vague hope, that change may produce relief? Debt certainly presses hardest, where prices have been longest kept up by artificial means. They find the shock lightest, who take it soonest; and I fully believe that, if those parts of the country which now suffer most, had not augmented the force of the blow by deferring it, they would have now been in a much better condition than they are. We may assure ourselves, once for all, sir, that there can be no such thing as payment of debts by legislation. We may abolish debts indeed; we may transfer property, by visionary and violent laws. But we deceive both ourselves and our constituents, if we flatter, either ourselves or them, with the hope that there is any relief against whatever pressure exists, but in economy and industry. The depression of prices and the stagnation of business, have been in truth the necessary result of circumstances. No government could prevent them, and no government can altogether relieve the people from their effect. We had enjoyed a day of extraordinary prosperity; we had been neutral while the world was at war, and had found a great demand for our products, our navigation, and our labor. We had no right to expect that that state of things would continue always. With the return of peace, foreign nations would struggle for themselves, and enter into competition with us in the great objects of pursuit.

Now, sir, what is the remedy for existing evils? what is the course of policy suited to our actual condition? Certainly it is not our wisdom to adopt any system that may be offered to us without examination, and in the blind hope that whatever *changes* our condition may improve it. It is better that we should

> "Bear those ills we have,
> Than fly to others that we know not of."

We are bound to see that there is a fitness and an aptitude in whatever measures may be recommended to relieve the evils that afflict us; and before we adopt a system that professes to make great alterations, it is our duty to look carefully to each leading interest of the community, and see how it may probably be affected by our proposed legislation.

And, in the first place, what is the condition of our commerce? Here we must clearly perceive, that it is not enjoying that rich harvest which fell to its fortune during the continuance of the European wars. It has been greatly depressed, and limited to small profits. Still, it is elastic and active, and seems capable of recovering itself in some measure from its depression. The shipping interest, also, has suffered severely, still more severely, probably, than commerce. If anything should strike us with astonishment, it is that the navigation of the United States should be able to sustain itself. Without any government protection whatever, it goes abroad to challenge competition with the whole world; and, in spite of all obstacles, it has yet been able to maintain 800,000 tons in the employment of foreign trade. How, sir, do the ship owners and navigators accomplish this? How is it that they are able to meet, and in some measure overcome, universal competition? Not, sir, by protection and bounties; but by unwearied exertion, by extreme economy, by unshaken perseverance, by that manly and resolute spirit which relies on itself to protect itself. These causes alone enable American ships still to keep their element, and show the flag of their country in distant seas. The rates of insurance may teach us how thoroughly our ships are built, and how skilfully and safely they are navigated. Risks are taken, as I learn, from the United States to Liverpool, at 1 per cent.; and from the United States to Canton and back, as low as 3 per cent. But when we look to the low rate of freight, and when we consider, also, that the articles entering into the composition of a ship, with the exception of wood, are dearer here than in other countries, we cannot but be utterly surprised, that the shipping interest has been able to sustain itself at all. I need not say that the navigation of the country is essential to its honor, and its defence. Yet, instead of proposing benefit for it in this hour of its depression, we propose by this measure to lay upon it new and heavy burdens. In the discussion, the other day, of that provision of the bill which proposes to tax tallow for the benefit of the oil merchants and whalemen, we had the pleasure of hearing eloquent eulogiums upon that portion of our shipping employed in the whale fishery, and strong statements of its importance to the public interest. But the same Bill proposes a severe tax upon that interest, for the benefit of the iron manufacturer and

the hemp grower. So that the tallowchandlers and soapboilers are sacrificed to the oil merchants, in order that these again may contribute to the manufacturers of iron and the growers of hemp.

If such be the state of our commerce and navigation, what is the condition of our home manufactures? How are they amidst the general depression? Do they need further protection? and if any, how much? On all these points, we have had much general statement, but little precise information. In the very elaborate speech of Mr. Speaker, we are not supplied with satisfactory grounds of judging in these various particulars. Who can tell, from anything yet before the Committee, whether the proposed duty be too high or too low, on any one article? Gentlemen tell us, that they are in favor of domestic industry; so am I. They would give it protection: so would I. But then all domestic industry is not confined to manufactures. The employments of agriculture, commerce, and navigation, are all branches of the same domestic industry; they all furnish employment for American capital, and American labor. And when the question is, whether new duties shall be laid, for the purpose of giving further encouragement to particular manufactures, every reasonable man must ask himself, both, whether the proposed new encouragement be necessary, and, whether it can be given without injustice to other branches of industry.

It is desirable to know, also, somewhat more distinctly, how the proposed means will produce the intended effect. One great object proposed, for example, is, the increase of the home market for the consumption of agricultural products. This certainly is much to be desired; but what provisions of the Bill are expected wholly, or principally to produce this, is not stated. I would not suggest that some increase of the home market may not follow, from the adoption of this Bill, but *all* its provisions have not an equal tendency to produce this effect. Those manufactures which employ most labor, create of course, most demand for articles of consumption; and those create least, in the production of which capital and skill enter as the chief ingredients of cost. I cannot, sir, take this Bill, merely because a Committee has recommended it. I cannot espouse a side, and fight under a flag. I wholly repel the idea, that we must take this law, or pass no law on the subject. What should hinder us from exercising our own judgments upon these provisions, singly and severally? Who has the power to place us, or why should we place ourselves, in a condition where we cannot give to every measure, that is distinct and separate in itself, a separate and distinct consideration? Sir, I presume no member of the Committee will withhold his assent from what he thinks right, until others will yield their assent to what they think wrong. There are many things in this Bill, acceptable probably to the general sense of the House. Why should not these provisions be passed into a law, and others left to be decided upon their own merits, as a majority of the House shall see fit? To some of these provisions, I am myself decidedly favorable; to others, I have great objections; and I should have been very glad of an opportunity of giving my own vote distinctly on propositions, which are, in their own nature, essentially and substantially distinct from one another.

But, sir, before expressing my own opinion upon the several provisions of this Bill, I will advert for a moment to some other general topics. We have heard much of the policy of England, and her example has been repeatedly urged upon us, as proving, not only the expediency of encouragement and protection, but of exclusion and direct prohibition also. I took occasion the other day to remark, that more liberal notions were growing prevalent on this subject; that the policy of restraints and prohibitions was getting out of repute, as the true nature of commerce became better understood; and that, among public men, those most distinguished, were most decided in their reprobation of the broad principle of exclusion and prohibition. Upon the truth of this representation, as matter of fact, I supposed there could not be two opinions among those who had observed the progress of political sentiment in other countries, and were acquainted with its present state. In this respect, however, it would seem, that I was greatly mistaken. We have heard it again and again declared, that the English government still adheres, with immovable firmness, to its old doctrines of prohibition; that although journalists, theorists, and scientific writers, advance other doctrines, yet the practical men, the legislators, the government of the country, are too wise to follow them. It has even been most sagaciously hinted, that the promulgation of liberal opinions on these subjects, is intended only for a delusion upon other nations, to cajole them into the folly of liberal ideas, while England retains to herself all the benefits of the admirable old system of prohibition. We have heard from Mr. Speaker a warm commendation of the complex mechanism of this system. The British Empire, it is said, is, in the first place, to be protected against the rest of the world; then the British isles against the colonies; next, the isles respectively against each other—England herself, as the heart of the empire, being protected most of all, and against all.

Truly, sir, it appears to me, that Mr. Speaker's imagination has seen system, and order, and beauty, in that, which is much more justly considered as the result of ignorance, partiality, or violence. This part of English legislation has resulted, partly from considering Ireland as a conquered country, partly from the want of a complete union, even with Scotland, and partly from the narrow views of colonial regulation, which in early and uninformed periods, influenced the European states.

And, sir, I imagine, nothing would strike the public men of England more singularly, than to find gentlemen of real information, and much weight, in the councils of this country, expressing sentiments like these, in regard to the existing state of these English laws. I have never said, indeed, that prohibitory laws did not exist in England; we all know they do; but the question is, does she owe her prosperity and greatness to these laws? I venture to say, that such is not the opinion of the public men now in England, and the continuance of the laws, even without any alteration, would not be evidence that their opinion is different from what I have represented it; because the laws having existed long, and great interests having been built up on the faith of them, they cannot now be repealed, without great and overwhelming inconvenience. Because a thing has been

wrongly done, it does not therefore follow that it can now be undone; and this is the reason, as I understand it, upon which exclusion, prohibition, and monopoly, are suffered to remain in any degree in the English system; and for the same reason, it will be wise in us to take our measures, on all subjects of this kind, with great caution. We may not be able, but at the hazard of much injury to individuals, hereafter to retrace our steps. And yet, whatever is extravagant, or unreasonable, is not likely to endure. There may come a moment of strong reaction; and if no moderation be shown in laying on duties, there may be little scruple in taking them off. It may here be observed, that there is a broad and marked distinction between entire prohibition, and reasonable encouragement. It is one thing by duties or taxes on foreign articles, to awaken a home competition in the production of the same articles; it is another thing to remove all competition by a total exclusion of the foreign article; and it is quite another thing still, by total prohibition, to raise at home, manufactures not suited to the climate, the nature of the country, or the state of the population. These are substantial distinctions, and although it may not be easy in every case, to determine which of them applies to a given article, yet, the distinctions themselves exist, and in most cases, will be sufficiently clear to indicate the true course of policy; and, unless I have greatly mistaken the prevailing sentiment in the councils of England, it grows every day more and more favorable to the diminution of restrictions, and to the wisdom of leaving much (I do not say everything, for that would not be true) to the enterprise and the discretion of individuals. I should certainly not have taken up the time of the Committee to state at any length the opinions of other governments, or of the public men of other countries, upon a subject like this; but an occasional remark made by me the other day, having been so directly controverted, especially by Mr. Speaker, in his observations yesterday, I must take occasion to refer to some proofs of what I have stated.

What, then, is the state of English opinion? Everybody knows that, after the termination of the late European war, there came a time of great pressure in England. Since her example has been quoted, let it be asked in what mode her government sought relief. Did it aim to maintain artificial and unnatural prices? Did it maintain a swollen and extravagant paper circulation? Did it carry further the laws of prohibition and exclusion? Did it draw closer the cords of colonial restraint? No, sir, but precisely the reverse. Instead of relying on legislative contrivances and artificial devices, it trusted to the enterprise and industry of the people; which it sedulously sought to excite, not by imposing restraint, but by removing it, wherever its removal was practicable. In May, 1820, the attention of the government having been much turned to the state of foreign trade, a distinguished member* of the House of Peers brought forward a parliamentary motion upon that subject, followed by an ample discussion, and a full statement of his own opinions. In the course of his remarks, he observed, "That there ought to be no prohibitory duties, as such; for that it was evident, that where a manufacture could not be carried on, or a production raised, but under the pro-

* Lord Lansdowne.

tection of a prohibitory duty, that manufacture, or that produce, could not be brought to market but at a loss. In his opinion, the name of strict prohibition might, therefore, in commerce, be got rid of altogether; but he did not see the same objection to protecting duties, which, while they admitted of the introduction of commodities from abroad similar to those which we ourselves manufactured, placed them so much on a level, as to allow a competition between them." "No axiom," he added, "was more true than this: that it was by growing what the territory of a country could grow most cheaply, and by receiving from other countries what it could not produce except at too great an expense, that the greatest degree of happiness was to be communicated to the greatest extent of population." In assenting to the motion, the first Minister * of the Crown expressed his own opinion of the great advantage resulting from unrestricted freedom of trade. "Of the soundness of that general principle," he observed, "I can entertain no doubt. I can entertain no doubt of what would have been the great advantages to the civilized world, if the system of unrestricted trade had been acted upon by every nation, from the earliest period of its commercial intercourse with its neighbours. If to those advantages there could have been any exceptions, I am persuaded that they would have been but few; and I am also persuaded that the cases, to which they would have referred, would not have been, in themselves, connected with the trade and commerce of England. But we are now in a situation in which, I will not say that a reference to the principle of unrestricted trade can be of no use, because such a reference may correct erroneous reasoning—but in which it is impossible for us, or for any country in the world, but the United States of America, to act unreservedly on that principle. The commercial regulations of the European world have been long established, and cannot suddenly be departed from." Having supposed a proposition to be made to England, by a foreign state, for free commerce and intercourse, and an unrestricted exchange of agricultural products, and of manufactures, he proceeds to observe: "It would be impossible to accede to such a proposition. We have risen to our present greatness under a different system. Some suppose that we have risen in consequence of that system; *others, of whom I am one, believe that we have risen in* SPITE OF THAT SYSTEM. But, whichever of these hypotheses be true, certain it is, that we have risen under a very different system than that of free and unrestricted trade. It is utterly impossible, with our debt and taxation, even if they were but half their existing amount, that we can suddenly adopt the system of free trade." Lord Ellenborough, in the same debate, said, "That he attributed the general distress then existing in Europe, to the regulations that had taken place since the destruction of the French power. Most of the states on the continent had surrounded themselves as with walls of brass, to inhibit intercourse with other states. Intercourse was prohibited, even in districts of the same state, as was the case in Austria and Sardinia. Thus, though the taxes on the people had been lightened, the severity of their condition had been increased. He believed that the discontent which pervaded most parts of Eu-

* Lord Liverpool.

rope, and especially Germany, was more owing to commercial restrictions, than to any theoretical doctrines on government; and that a free communication among them would do more to restore tranquillity, than any other step that could be adopted. He objected to all attempts to frustrate the benevolent intentions of Providence, which had given to various countries various wants, in order to bring them together. He objected to it as antisocial; he objected to it, as making commerce the means of barbarising, instead of enlightening nations. The state of the trade with France was the most disgraceful to both countries; the two greatest civilized nations of the world, placed at a distance of scarcely twenty miles from each other, had contrived, by their artificial regulations, to reduce their commerce with each other to a mere nullity." Every member, speaking on this occasion, agreed in the general sentiments favorable to unrestricted intercourse, which had thus been advanced; one of them remarking, at the conclusion of the debate, that "the principles of free trade, which he was happy to see so fully recognised, were of the utmost consequence; for, though, in the present circumstances of the country, a free trade was unattainable, yet their task hereafter was to approximate to it. Considering the prejudices and interests which were opposed to the recognition of that principle, it was no small indication of the firmness and liberality of government, to have so fully conceded it."

Sir, we have seen, in the course of this discussion, that several gentlemen have expressed their high admiration of the *silk manufacture* of England. Its commendation was begun, I think, by the honorable member from Vermont, who sits near me, who thinks that that alone gives conclusive evidence of the benefits produced by attention to manufactures, inasmuch as it is a great source of wealth to the nation, and has amply repaid all the cost of its protection. Mr. Speaker's approbation of this part of the English example, was still warmer. Now, sir, it does so happen, that both these gentlemen differ very widely on this point, from the opinions entertained in England, by persons of the first rank, both of knowledge and of power. In the debate to which I have already referred, the proposer of the motion urged the expediency of providing for the admission of the silks of France into England. "He was aware," he said, "that there was a poor and industrious body of manufacturers, whose interests must suffer by such an arrangement; and therefore he felt that it would be the duty of parliament to provide for the present generation, by a large parliamentary grant. It was conformable to every principle of sound justice to do so, when the interests of a particular class were sacrificed to the good of the whole." In answer to these observations, Lord Liverpool said that, with reference to several branches of manufactures, time, and the change of circumstances, had rendered the system of protecting duties merely nominal; and that, in his opinion, if all the protecting laws which regarded both the woollen and cotton manufactures, were to be repealed, no injurious effects would thereby be occasioned. "But," he observes, "with respect to silk, that manufacture in this kingdom is so completely artificial, that any attempt to introduce the principles of free trade with reference to it, might put an end to it altogether. I allow

that the silk manufacture is not natural to this country. *I wish we had never had a silk manufactory.* I allow that it is natural to France; I allow, that it might have been better, had each country adhered exclusively to that manufacture in which each is superior; and had the silks of France been exchanged for British cottons. But I must look at things as they are; and when I consider the extent of capital, and the immense population, consisting, I believe, of about 50,000 persons engaged in our silk manufacture, I can only say, that one of the few points in which I totally disagree with the proposer of the motion, is the expediency, under existing circumstances, of holding out any idea, that it would be possible to relinquish the silk manufacture, and to provide for those who live by it, by parliamentary enactment. Whatever objections there may be to the continuance of the protecting system, I repeat, that it is impossible altogether to relinquish it. I may regret that the system was ever commenced; but as I cannot recall that act, I must submit to the inconvenience by which it is attended, rather than expose the country to evils of greater magnitude." Let it be remembered, sir, that these are not the sentiments of a theorist, nor the fancies of speculation; but the operative opinions of the first minister of England, acknowledged to be one of the ablest and most practical statesmen of his country. Sir, gentlemen could have hardly been more unfortunate than in the selection of the silk manufacture in England, as an example of the beneficial effects of that system which they would recommend. It is, in the language which I have quoted, completely artificial. It has been sustained by I know not how many laws, breaking in upon the plainest principles of general expediency. At the last session of Parliament, the manufacturers petitioned for the repeal of three or four of these statutes, complaining of the vexatious restrictions which they impose on the wages of labor; setting forth, that a great variety of orders has from time to time been issued by magistrates under the authority of these laws, interfering, in an oppressive manner, with the minutest details of the manufacture: such as limiting the number of threads to an inch; restricting the widths of many sorts of work; and determining the quantity of labor not to be exceeded without extra wages: that by the operation of these laws, the rate of wages, instead of being left to the recognised principles of regulation, has been arbitrarily fixed by persons whose ignorance renders them incompetent to a just decision; that masters are compelled by law to pay an equal price for all work, whether well or ill performed; and that they are totally prevented the use of improved machinery, it being ordered, that work, in the weaving of which machinery is employed, shall be paid precisely at the same rate as if done by hand; that these acts have frequently given rise to the most vexatious regulations, the unintentional breach of which has subjected manufacturers to ruinous penalties; and that, the introduction of all machinery being prevented, by which labor might be cheapened, and the manufacturers being compelled to pay at a fixed price, under all circumstances, they are prevented from affording employment to their workmen, in times of stagnation of trade, but are compelled to stop their looms. And finally, they complain, that, notwithstanding these grievances under which

they labor, while carrying on their manufacture in London, the law still prohibits them, while they continue to reside there, from employing any portion of their capital in the same business in any other part of the kingdom, where it might be more beneficially conducted.—Now, sir, absurd as these laws must appear to be to every man, the attempt to repeal them did not, as far as I recollect, altogether succeed. The weavers were too numerous, their interests too great, or their prejudices too strong; and this notable instance of protection and monopoly still exists, to be lamented in England with as much sincerity as it seems to be admired here.

In order further to show the prevailing sentiment of the English government, I would refer to a report of a select committee of the House of Commons, at the head of which was the vice president of the board of trade, (Mr. Wallace) in July, 1820. "The time," say that committee, "when monopolies could be successfully supported, or would be patiently endured, either in respect to subjects against subjects, or particular countries against the rest of the world, seems to have passed away. Commerce, to continue undisturbed and secure, must be, as it was intended to be, a source of reciprocal amity between nations, and an interchange of productions, to promote the industry, the wealth, and the happiness, of mankind." In moving for the reappointment of the committee, in February, 1823, the same gentleman said; "We must also get rid of that feeling of appropriation, which exhibited itself in a disposition to produce everything necessary for our own consumption, and to render ourselves independent of the world. No notion could be more absurd or mischievous; it led, even in peace, to an animosity and rancor, greater than existed in time of war. Undoubtedly there would be great prejudices to combat, both in this country and elsewhere, in the attempt to remove the difficulties which are most obnoxious. It would be impossible to forget the attention which was in some respects due to the present system of protections; although that attention ought certainly not to be carried beyond the absolute necessity of the case." And in a second report of the committee, drawn by the same gentleman, in that part of it which proposes a diminution of duties on timber from the north of Europe, and the policy of giving a legislative preference to the importation of such timber in the log, and a discouragement of the importation of deals, it is stated that the committee reject this policy, because, among other reasons, "it is founded on a principle of exclusion, which they are most averse to see brought into operation, in any *new instance*, without the warrant of some evident and great political expediency." And on many subsequent occasions, the same gentleman has taken occasion to observe, that he differed from those who thought that manufactures could not flourish without restrictions on trade; that old prejudices of that sort were dying away, and that more liberal and just sentiments were taking their place. These sentiments appear to have been followed by important legal provisions, calculated to remove restrictions and prohibitions, where they were most severely felt; that is to say, in several branches of navigation and trade.

They have relaxed their colonial system, they have opened the ports of their islands, and have done away the restriction which limi-

ted the trade of the colony to the mother country. Colonial products can now be carried directly from the islands to any part of Europe; and it may not be improbable, considering our own high duties on spirits, that that article may be exchanged hereafter by the English West India colonies, directly, for the timber and deals of the Baltic.

It may be added that Mr. Lowe, whom the gentleman has cited, says, that nobody supposes that the three great staples of English manufactures, cotton, woollen, and hardware, are benefited by any existing protecting duties; and that one object of all these protecting laws is usually overlooked, and that is, that they have been intended to reconcile the various interests to taxation: the corn law, for example, being designed as some equivalent to the agricultural interest for the burden of tithes and of poor rates.

In fine, sir, I think it is clear, that, if we now embrace the system of prohibitions and restrictions, we shall show an affection for what others have discarded, and be attempting to ornament ourselves with cast off apparel.*

Sir, I should not have gone into this prolix detail of opinions from any consideration of their special importance on the present occasion; but, having happened to state, that such was the actual opinion of the government of England at the present time, and the accuracy of this representation having been so confidently denied, I have chosen to put the matter beyond doubt or cavil, although at the expense of these tedious citations. I shall have occasion, hereafter, of referring more particularly to sundry recent British enactments, by way of showing the diligence and spirit with which that government strives to sustain its navigating interest, by opening the widest possible range to the enterprise of individual adventurers. I repeat, that I have not alluded to these examples of a foreign state as being fit to control our own policy. In the general principle, I acquiesce. Protection, when carried to the point which is now recommended, that is, to entire prohibition, seems to me destructive of all commercial intercourse between nations. We are urged to adopt the system upon general principles; and what would be the consequence of the universal application of such a general principle, but that nations would abstain entirely from all intercourse with one another? I do not admit the general principle; on the contrary, I think freedom of trade to be the general principle, and restriction the exception. And it is for every state, taking into view its own condition, to judge of the propriety, in any case, of making an exception, constantly preferring, as I think all wise governments will, not to depart without urgent reason from the general rule.

There is another point in the existing policy of England, to which I would most earnestly invite the attention of the Committee; I mean the warehouse system, or what we usually call the system of drawback. Very great prejudices appear to me to exist with us on that subject. We seem averse to the extension of the principle. The English government, on the contrary, appear to have carried it to the extreme of liberality. They have arrived, however, at their present opinions, and present practice, by slow degrees. The transit system was commenced about the year 1803, but the first law was par-

* Vide Note, page 260.

tial and limited. It admitted the importation of raw materials for exportation, but it excluded almost every sort of manufactured goods. This was done for the same reason that we propose to prevent the transit of Canadian wheat through the United States—the fear of aiding the competition of the foreign article with our own, in foreign markets. Better reflection, or more experience, has induced them to abandon that mode of reasoning, and to consider all such means of influencing foreign markets as nugatory: since, in the present active and enlightened state of the world, nations will supply themselves from the best sources, and the true policy of all producers, whether of raw materials, or of manufactured articles, is, not vainly to endeavour to keep other venders out of the market, but to conquer them in it, by the quality and the cheapness of their articles. The present policy of England, therefore, is, to allure the importation of commodities into England, there to be deposited in English warehouses, thence to be exported in assorted cargoes, and thus enabling her to carry on a general export trade to all quarters of the globe. Articles of all kinds, with the single exception of tea, may be brought into England, from any part of the world, in foreign as well as British ships, there warehoused, and again exported, at the pleasure of the owner, without the payment of any duty, or government charge whatever.

While I am upon this subject, I would take notice also of the recent proposition in the English Parliament to abolish the tax on imported wool; and it is observable, that those who support this proposition, give the same reasons as have been offered here, within the last week, against the duty which we propose on the same article. They say, that their manufacturers require a cheap and coarse wool, for the supply of the Mediterranean and Levant trade, and that, without a more free admission of the wool of the continent, that trade will all fall into the hands of the Germans and Italians, who will carry it on through Leghorn and Trieste. While there is this duty on foreign wool to protect the wool growers of England, there is on the other hand a prohibition on the exportation of the native article, in aid of the manufacturers. The opinion seems to be gaining strength, that the true policy is to abolish both.

Laws have long existed in England, preventing the emigration of artisans, and the exportation of machinery; but the policy of these, also, has become doubted, and an inquiry has been instituted in Parliament into the expediency of repealing them. As to the emigration of artisans, say those who disapprove the laws, if that were desirable, no law could effect it; and as to the exportation of machinery, let us fabricate and export it, as we would any other commodity. If France is determined to spin and weave her own cotton, let us, if we may, still have the benefit of furnishing the machinery.

I have stated these things, sir, to show what seems to be the general tone of thinking and reasoning on these subjects in that country, the example of which has been so much pressed upon us. Whether the present policy of England be right or wrong, wise or unwise, it cannot, as it seems clearly to me, be quoted as an authority for carrying further the restrictive and exclusive system, either in regard to manufactures or trade. To reestablish a sound currency, to meet

at once the shock, tremendous as it was, of the fall of prices, to enlarge her capacity for foreign trade, to open wide the field of individual enterprise and competition, and to say, plainly and distinctly, that the country must relieve itself from the embarrassments which it felt, by economy, frugality, and renewed efforts of enterprise; these appear to be the general outline of the policy which England has pursued.

Mr. Chairman: I will now proceed to say a few words upon a topic, but, for the introduction of which, into this debate, I should not have given the Committee, on this accasion, the trouble of hearing me. Some days ago, I believe it was when we were settling the controversy between the oil merchants and the tallowchandlers, the *Balance of Trade* made its appearance in debate, and I must confess, sir, that I spoke of it, or rather spoke to it, somewhat freely and irreverently. I believe I used the hard names which have been imputed to me; and I did it simply for the purpose of laying the spectre, and driving it back to its tomb. Certainly, sir, when I called the old notion on this subject nonsense, I did not suppose that I should offend any one, unless the dead should happen to hear me. All the living generation, I took it for granted, would think the term very properly applied. In this, however, I was mistaken. The dead and the living rise up together to call me to account, and I must defend myself as well as I am able.

Let us inquire, then, sir, what is meant by an unfavorable balance of trade, and what the argument is, drawn from that source. By an unfavorable balance of trade, I understand, is meant that state of things in which importation exceeds exportation. To apply it to our own case, if the value of goods imported, exceed the value of those exported, then the *balance of trade* is said to be against us, inasmuch as we have run in debt to the amount of this difference. Therefore, it is said, that, if a nation continue long in a commerce like this, it must be rendered absolutely bankrupt. It is in the condition of a man that buys more than he sells; and how can such a traffic be maintained without ruin? Now, sir, the whole fallacy of this argument consists in supposing that, whenever the value of imports exceeds that of exports, a debt is necessarily created to the extent of the difference: whereas, ordinarily, the import is no more than the result of the export, augmented in value by the labor of transportation. The excess of imports over exports, in truth, usually shows the gains, not the losses, of trade; or, in a country that not only buys and sells goods, but employs ships in carrying goods also, it shows the profits of commerce, and the earnings of navigation. Nothing is more certain than that in the usual course of things, and taking a series of years together, the value of our imports is the aggregate of our exports and our freights. If the value of commodities, imported in a given case, did not exceed the value of the outward cargo, with which they were purchased, then it would be clear to every man's common sense, that the voyage had not been profitable. If such commodities fell far short in value of the cost of the outward cargo, then the voyage would be a very losing one; and yet it would present exactly that state of things, which, according to the notion of a *balance of trade*, can alone indicate a prosperous commerce. On the other hand. if the return

cargo were found to be worth much more than the outward cargo, while the merchant, having paid for the goods exported, and all the expenses of the voyage, finds a handsome sum yet in his hands, which he calls profits, the *balance of trade* is still against him, and whatever he may think of it, he is in a very bad way. Although one individual, or all individuals gain, the nation loses; while all its citizens grow rich, the country grows poor. This is the doctrine of the *balance of trade*. Allow me, sir, to give an instance tending to show how unaccountably individuals deceive themselves, and imagine themselves to be somewhat rapidly mending their condition, while they ought to be persuaded that, by that infallible standard, *the balance of trade*, they are on the high road to ruin. Some years ago, in better times than the present, a ship left one of the towns of New England with 70,000 specie dollars. She proceeded to Mocha, on the Red Sea, and there laid out these dollars in coffee, drugs, spices, &c. With this new cargo she proceeded to Europe; two-thirds of it were sold in Holland for $130,000, which the ship brought back, and placed in the same Bank, from the vaults of which she had taken her original outfit. The other third was sent to the ports of the Mediterranean, and produced a return of 25,000 dollars in specie, and 15,000 dollars in Italian merchandise. These sums together make 170,000 dollars imported, which is 100,000 dollars more than was exported, and is therefore proof of an unfavorable *balance of trade*, to that amount, in this adventure. We should find no great difficulty, sir, in paying off our balances if this were the nature of them all.

The truth is, Mr. Chairman, that all these obsolete and exploded notions had their origin in very mistaken ideas of the true nature of commerce. Commerce is not a gambling among nations for a stake, to be won by some and lost by others. It has not the tendency necessarily to impoverish one of the parties to it, while it enriches the other; all parties gain, all parties make profits, all parties grow rich, by the operations of just and liberal commerce. If the world had but one clime, and but one soil; if all men had the same wants and the same means, on the spot of their existence, to gratify those wants; then, indeed, what one obtained from the other by exchange, would injure one party in the same degree that it benefited the other; then, indeed, there would be some foundation for the *balance of trade*. But Providence has disposed our lot much more kindly. We inhabit a various earth. We have reciprocal wants, and reciprocal means for gratifying one another's wants. This is the true origin of commerce, which is nothing more than an exchange of equivalents, and from the rude barter of its primitive state, to the refined and complex condition in which we see it, its principle is uniformly the same; its only object being, in every stage, to produce that exchange of commodities between individuals and between nations, which shall conduce to the advantage and to the happiness of both. Commerce between nations has the same essential character, as commerce between individuals, or between parts of the same nation. Cannot two individuals make an interchange of commodities which shall prove beneficial to both, or in which the *balance of trade* shall be in favor of both? If not, the tailor and the shoemaker, the

farmer and the smith, have hitherto very much misunderstood their own interest. And with regard to the internal trade of a country, in which the same rule would apply as between nations, do we ever speak of such an intercourse being prejudicial to one side because it is useful to the other? Do we ever hear that, because the intercourse between New York and Albany is advantageous to one of those places, it must therefore be ruinous to the other?

May I be allowed, sir, to read a passage on this subject from the observations of a gentleman, in my opinion one of the most clear and sensible writers and speakers of the age upon subjects of this sort?* "There is no political question on which the prevalence of false principles is so general, as in what relates to the nature of commerce and to the pretended *balance of trade;* and there are few which have led to a greater number of practical mistakes, attended with consequences extensively prejudicial to the happiness of mankind. In this country, our parliamentary proceedings, our public documents, and the works of several able and popular writers, have combined to propagate the impression that we are indebted for much of our riches to what is called *the balance of trade.*" "Our true policy would surely be to profess, as the object and guide of our commercial system, that which every man who has studied the subject, must know to be the true principle of commerce, *the interchange of reciprocal and equivalent benefit.* We may rest assured that it is not in the nature of commerce to enrich one party at the expense of the other. This is a purpose at which, if it were practicable, we ought not to aim; and which, if we aimed at, we could not accomplish." These remarks, I believe, sir, were written some ten or twelve years ago. They are in perfect accordance with the opinions advanced in more elaborate treatises, and now that the world has returned to a state of peace, and commerce has resumed its natural channels, and different nations are enjoying, or seeking to enjoy, their respective portions of it, all see the justness of these ideas; all see, that, in this day of knowledge and of peace, there can be no commerce between nations but that which shall benefit all who are parties to it.

If it were necessary, Mr. Chairman, I might ask the attention of the Committee to recur to a document before us, on this subject, of the *balance of trade.* It will be seen by reference to the accounts, that, in the course of the last year, our total export to Holland exceeded two millions and a half; our total import from the same country was but 700,000 dollars. Now can any man be wild enough to make any inference from this of the gain or loss of our trade with Holland for that year? Our trade with Russia for the same year, produced a balance the other way; our import being two millions, and our export but half a million. But this has no more tendency to show the Russian trade a losing trade, than the other statement has to show that the Dutch trade has been a gainful one. Neither of them, by itself, proves anything.

Springing out of this notion of a *balance of trade*, there has been another idea, which has been much dwelt upon in the course of this debate; that is, that we ought not to buy of nations who do not buy of us; for example, that the Russian trade is a trade disadvantageous to

* Mr. Huskisson, President of the English Board of Trade.

the country, and ought to be discouraged, because, in the ports of Russia, we buy more than we sell. Now allow me to observe, in the first place, sir, that we have no account showing how much we do sell in the ports of Russia. Our official returns show us only what is the amount of our direct exports to her ports. But then we all know that the proceeds of other of our exports go to the same market, though indirectly. We send our own products, for example, to Cuba, or to Brazil; we there exchange them for the sugar and the coffee of those countries, and these articles we carry to St. Petersburg, and there sell them. Again; our exports to Holland and Hamburg are connected directly or indirectly with our imports from Russia. What difference does it make, in sense or reason, whether a cargo of iron be bought at St. Petersburg by the exchange of a cargo of tobacco, or whether the tobacco has been sold on the way, in a better market, in a port of Holland, the money remitted to England, and the iron paid for by a bill on London? There might indeed have been an augmented freight, there might have been some saving of commissions, if tobacco had been in brisk demand in the Russian market. But still there is nothing to show that the whole voyage may not have been highly profitable. That depends upon the original cost of the article here, the amount of freight and insurance to Holland, the price obtained there, the rate of exchange between Holland and England; the expense, then, of proceeding to St. Petersburg, the price of iron there, the rate of exchange between that place and England, the amount of freight and insurance home, and finally, the value of the iron, when brought to our own market. These are the calculations which determine the fortune of the adventure; and nothing can be judged of it, one way or the other, by the relative state of our imports or exports with Holland, England, or Russia.

I would not be understood to deny that it may often be our interest to cultivate a trade with countries that most require such commodities as we can furnish, and which are capable also of directly supplying our own wants. This is the simplest and most original form of all commerce, and is, no doubt, highly beneficial. And some countries are so situated, doubtless, that commerce, in this original form, or something near it, may be all that they can, without considerable inconvenience, carry on. Our trade, for example, with Madeira and the Western Islands, has been useful to the country as furnishing a demand for some portion of our agricultural products, which probably could not have been bought, had we not received their products in return. Countries situated still farther from the great marts and highways of the commercial world, may afford still stronger instances of the necessity and utility of conducting commerce on the original principle of barter, without much assistance from the operations of credit and exchange. All I would be understood to say is, that it by no means follows that that must be a losing trade with any country, from which we receive more of her products than she receives of ours. And since I was supposed the other day, in speaking upon this subject, to have advanced opinions which not only this country ought to reject, but which also other countries, and those the most distinguished for skill and success in commercial intercourse, do reject, I will ask leave to refer again to the discussion

which I first mentioned in the English Parliament, relative to the foreign trade of that country. "With regard," says the mover * of the proposition, "to the argument employed against renewing our intercourse with the north of Europe, namely, that those who supplied us with timber from that quarter would not receive British manufactures in return, it appeared to him futile and ungrounded. If they did not send direct for our manufactures at home, they would send for them to Leipsic and other fairs of Germany. Were not the Russian and Polish merchants purchasers there to a great amount? But he would never admit the principle, that a trade was not profitable, because we were obliged to carry it on with the precious metals, or that we ought to renounce it, because our manufactures were not received by the foreign nation, in return for its produce. Whatever we received must be paid for in the produce of our land and labor, directly or circuitously, and he was glad to have the noble Earl's † marked concurrence in this principle."

Referring ourselves again, sir, to the analogies of common life, no one would say, that a farmer or a mechanic should buy *only* where he can do so by the exchange of his own produce, or of his own manufacture. Such exchange may be often convenient; and, on the other hand, the cash purchase may be often more convenient. It is the same in the intercourse of nations. Indeed, Mr. Speaker has placed this argument on very clear grounds. It has been said, in the early part of the debate, that if we cease to import English cotton fabrics, England would no longer continue to purchase our cotton. To this, Mr. Speaker has replied, with great force and justice, that, as she must have cotton in large quantities, she will buy the article where she can find it best and cheapest; and that it would be quite ridiculous in her, manufacturing as she still would be, for her own vast consumption, and the consumption of millions in other countries, to reject our uplands because we had learned to manufacture a part of them for ourselves. And would it not be equally ridiculous in us, if the commodities of Russia were both cheaper, and better suited to our wants, than could be found elsewhere, to abstain from commerce with her, because she will not receive, in return, other commodities which we have to sell, but which she has no occasion to buy?

Intimately connected, sir, with this topic, is another, which has been brought into the debate; I mean, the evil so much complained of—the exportation of specie. We hear gentlemen imputing the loss of market at home to a want of money, and this want of money to the exportation of the precious metals. We hear the India and China trade denounced, as a commerce conducted on our side, in a great measure, with gold and silver. These opinions, sir, are clearly void of all just foundation, and we cannot too soon get rid of them. There are no shallower reasoners, than those political and commercial writers, who would represent it to be the only true and gainful end of commerce, to accumulate the precious metals. These are articles of use, and articles of merchandise, with this additional circumstance belonging to them, that they are made, by the general consent of nations, the standard by which the value of all other merchandise is to be estimated. In regard to weights and measures, something drawn

* Marquis of Lansdowne. † Lord Liverpool.

from external nature is made a common standard, for the purposes of general convenience; and this is precisely the office performed by the precious metals, in addition to those uses to which, as metals, they are capable of being applied. There may be of these, too much or too little, in a country, at a particular time, as there may be of any other articles. When the market is overstocked with them, as it often is, their exportation becomes as proper and as useful as that of other commodities, under similar circumstances. We need no more repine, when the dollars, which have been brought here from South America, are despatched to other countries, than when coffee and sugar take the same direction. We often deceive ourselves by attributing to a scarcity of money, that which is the result of other causes. In the course of this debate, the honorable member from Pennsylvania has represented the country as full of everything but money. But this, I take to be a mistake. The agricultural products, so abundant in Pennsylvania, will not, he says, sell for money; but they will sell for money as quick as for any other article which happens to be in demand. They will sell for money, for example, as easily as for coffee, or for tea, at the prices which properly belong to those articles. The mistake lies in imputing that to want of money, which arises from want of demand. Men do not buy wheat because they have money, but because they want wheat. To decide whether money be plenty or not, that is, whether there be a large portion of capital unemployed or not, when the currency of a country is metallic, we must look, not only to the prices of commodities, but also to the rate of interest. A low rate of interest, a facility of obtaining money on loans, a disposition to invest in permanent stocks, all of which are proofs that money is plenty, may nevertheless often denote a state not of the highest prosperity. They may, and often do, show a want of employment for capital; and the accumulation of specie shows the same thing. We have no occasion for the precious metals as money, except for the purposes of circulation, or rather of sustaining a safe paper circulation. And whenever there be a prospect of a profitable investment abroad, all the gold and silver, except what these purposes require, will be exported. For the same reason, if a demand exist abroad for sugar and coffee, whatever amount of those articles might exist in the country, beyond the wants of its own consumption, would be sent abroad to meet that demand. Besides, sir, how should it ever occur to anybody, that we should continue to export gold and silver, if we did not continue to import them also? If a vessel take our own products to the Havana, or elsewhere, exchange them for dollars, proceed to China, exchange them for silks and teas, bring these last to the ports of the Mediterranean, sell them there for dollars, and return to the United States; this would be a voyage resulting in the importation of the precious metals. But if she had returned from Cuba, and the dollars obtained there had been shipped direct from the United States to China, the China goods sold in Holland, and the proceeds brought home in the hemp and iron of Russia, this would be a voyage in which they were exported. Yet everybody sees, that both might be equally beneficial to the individuals and to the public. I believe, sir, that, in point of fact, we have

enjoyed great benefit in our trade with India and China, from the liberty of going from place to place all over the world, without being obliged in the meantime, to return home—a liberty not heretofore enjoyed by the private traders of England, in regard to India and China. Suppose the American ship to be at Brazil, for example—she could proceed with her dollars direct to India, and, in return, could distribute her cargo in all the various ports of Europe, or America: while an English ship, if a private trader, being at Brazil, must first return to England, and then could only proceed in the direct line from England to India. This advantage, our countrymen have not been backward to improve; and in the debate to which I have already so often referred, it was stated, not without some complaint of the inconvenience of exclusion, and the natural sluggishness of monopoly, that American ships were at that moment fitting out in the Thames, to supply France, Holland, and other countries on the continent, with tea; while the East India Company would not do this of themselves, nor allow any of their fellow countrymen to do it for them.

There is yet another subject, Mr. Chairman, upon which I would wish to say something, if I might presume upon the continued patience of the Committee. We hear, sometimes, in the House, and continually out of it, of the rate of exchange, as being one proof that we are on the downward road to ruin. Mr. Speaker himself has adverted to that topic, and I am afraid that his authority may give credit to opinions clearly unfounded, and which lead to very false and erroneous conclusions. Sir, let us see what the facts are. Exchange on England has recently risen one or one and a half per cent., partly owing, perhaps, to the introduction of this bill into Congress. Before this recent rise, and for the last six months, I understand its average may have been about seven and a half per cent. advance. Now, supposing this to be the *real*, and not merely, as it is, the nominal par of exchange, between us and England, what would it prove? Nothing, except that funds were wanted, in England, for commercial operations, to be carried on either in England or elsewhere. It would not necessarily show that we were indebted to England: for, if we had occasion to pay debts in Russia or Holland, funds in England would naturally enough be required for such a purpose. And even if it did prove that a balance was due England, at the moment, it would have no tendency to explain to us whether our commerce with England had been profitable or unprofitable. But it is not true, in point of fact, that the *real* price of exchange is seven and a half per cent. advance, nor, indeed, that there is, at the present moment, any advance at all. That is to say, it is not true, that merchants will give such an advance, or any advance, for *money* in England, more than they would give for the same amount, in the same currency, here. It will strike every one, who reflects upon it, that, if there were a real difference of seven and a half per cent. money would be immediately shipped to England; because the expense of transportation would be far less than that difference. Or, commodities of trade would be shipped to Europe, and the proceeds remitted to England. If it could so happen, that American merchants should be willing to pay ten per cent. premium for money in England,

or, in other words, that a real difference to that amount, in the exchange, should exist, its effects would be immediately seen in new shipments of our own commodities to Europe, because this state of things would create new motives. A cargo of tobacco, for example, might sell at Amsterdam for the same price as before; but if its proceeds, when remitted to London, were advanced, as they would be in such case, ten per cent. by the state of exchange, this would be so much added to the price, and would operate, therefore, as a motive for the exportation; and in this way, national balances are, and always will be, adjusted.

To form any accurate idea of the true state of exchange, between two countries, we must look at their currencies, and compare the quantities of gold and silver which they may respectively represent. This usually explains the state of the exchanges; and this will satisfactorily account for the apparent advance, now existing, on bills drawn on England. The English standard of value is gold: with us, that office is performed by gold, and by silver also, at a fixed relation to each other. But our estimate of silver is rather higher, in proportion to gold, than most nations give it; it is higher, especially, than in England, at the present moment. The consequence is, that silver, which remains a legal currency with us, stays here, while the gold has gone abroad; verifying the universal truth, that, if *two* currencies be allowed to exist, of different values, that which is cheapest will fill up the whole circulation. For as much gold as will suffice to pay here a debt of a given amount, we can buy in England more silver than would be necessary to pay the same debt here; and from this difference in the value of silver arises wholly, or in a great measure, the present apparent difference in exchange. Spanish dollars sell now, in England, for four shillings and nine pence sterling per ounce; equal to one dollar and six cents. By our standard, the same ounce is worth one dollar and sixteen cents; being a difference of about nine per cent. The true par of exchange, therefore, is nine per cent. If a merchant here pay one hundred Spanish dollars for a bill on England, at nominal par, in sterling money, that is, for a bill for £22 10, the proceeds of this bill, when paid in England, in the legal currency, will there purchase, at the present price of silver, one hundred and nine Spanish dollars. Therefore, if the nominal advance on English bills do not exceed nine pe cent. the real exchange is not against this country; in other words, it does not show that there is any pressing or particular occasion for the remittance of funds to England.

As little can be inferred from the occasional transfer of United States' stock to England. Considering the interest paid on our stocks, the entire stability of our credit, and the accumulation of capital in England, it is not at all wonderful that investments should occasionally be made in our funds. As a sort of countervailing fact, it may be stated that English stocks are now actually holden in this country, though probably not to any considerable amount.

I will now proceed, sir, to state some objections which I feel, of a more general nature, to the course of Mr. Speaker's observations.

He seems to me to argue the question as if all domestic industry were confined to the production of manufactured articles; as if the

employment of our own capital, and our own labor, in the occupations of commerce and navigation, were not as emphatically domestic industry as any other occupation. Some other gentlemen, in the course of the debate, have spoken of the price paid for every foreign manufactured article, as so much given for the encouragement of foreign labor, to the prejudice of our own. But is not every such article the product of our own labor as truly as if we had manufactured it ourselves? Our labor has earned it, and paid the price for it. It is so much added to the stock of national wealth. If the commodity were dollars, nobody would doubt the truth of this remark; and it is precisely as correct in its application to any other commodity as to silver. One man makes a yard of cloth at home; another raises agricultural products, and buys a yard of imported cloth. Both these are equally the earnings of domestic industry, and the only questions that arise in the case are two: the first is, which is the best mode, under all the circumstances, of obtaining the article; the second is, *how far this first question is proper to be decided by government, and how far it is proper to be left to individual discretion.* There is no foundation for the distinction which attributes to certain employments the peculiar appellation of American industry; and it is, in my judgment, extremely unwise, to attempt such discriminations. We are asked what nations have ever attained eminent prosperity without encouraging manufactures? I may ask, what nation ever reached the like prosperity without promoting foreign trade? I regard these interests as closely connected, and am of opinion that it should be our aim to cause them to flourish together. I know it would be very easy to promote manufactures, at least for a time, but probably only for a short time, if we might act in disregard of other interests. We could cause a sudden transfer of capital, and a violent change in the pursuits of men. We could exceedingly benefit some classes by these means. But what, then, becomes of the interests of others? The power of collecting revenue by duties on imports, and the habit of the government of collecting almost its whole revenue in that mode, will enable us, without exceeding the bounds of moderation, to give great advantages to those classes of manufactures which we may think most useful to promote at home. What I object to is the immoderate use of the power—exclusions and prohibitions; all of which, as I think, not only interrupt the pursuits of individuals, with great injury to themselves, and little or no benefit to the country, but also often divert our own labor, or, as it may very properly be called, our own domestic industry, from those occupations in which it is well employed and well paid, to others, in which it will be worse employed, and worse paid. For my part, I see very little relief to those who are likely to be deprived of their employments, or who find the prices of the commodities which they need, raised, in any of the alternatives which Mr. Speaker has presented. It is nothing to say that they may, if they choose, continue to buy the foreign article; the answer is, the price is augmented: nor that they may use the domestic article; the price of that also is increased. Nor can they supply themselves by the substitution of their own fabric. How can the agriculturist make his own iron? How can the ship owner grow his own hemp?

But I have a yet stronger objection to the course of Mr. Speaker's reasoning; which is, that he leaves out of the case all that has been already done for the protection of manufactures, and argues the question as if those interests were now, for the first time, to receive aid from duties on imports. I can hardly express the surprise I feel that Mr. Speaker should fall into the common modes of expression used elsewhere, and ask if we will give our manufacturers no protection. Sir, look to the history of our laws; look to the present state of our laws. Consider that our whole revenue, with a trifling exception, is collected at the custom-house, and always has been; and then say what propriety there is in calling on the government for protection, as if no protection had heretofore been afforded. The real question before us, in regard to all the important clauses of the bill, is not whether we will *lay* duties, but whether we will *augment* duties. The demand is for something more than exists, and yet it is pressed as if nothing existed. It is wholly forgotten that iron and hemp, for example, already pay a very heavy and burdensome duty; and, in short, from the general tenor of Mr. Speaker's observations, one would infer that, hitherto, we had rather taxed our own manufactures than fostered them by taxes on those of other countries. We hear of the fatal policy of the tariff of 1816; and yet the law of 1816 was passed avowedly for the benefit of manufacturers, and, with very few exceptions, imposed on imported articles very great additions of tax; in some important instances, indeed, amounting to a prohibition.

Sir, on this subject it becomes us at least to understand the real posture of the question. Let us not suppose that we are *beginning* the protection of manufactures, by duties on imports. What we are asked to do is, to render those duties much higher, and therefore, instead of dealing in general commendations of the benefits of protection, the friends of the bill, I think, are bound to make out a fair case for each of the manufactures which they propose to benefit. The government has already done much for their protection, and it ought to be presumed to have done enough, unless it be shown, by the facts and considerations applicable to each, that there is a necessity for doing more.

On the general question, sir, allow me to ask if the doctrine of prohibition, as a general doctrine, be not preposterous? Suppose all nations to act upon it; they would be prosperous, then, according to the argument, precisely in the proportion in which they abolished intercourse with one another. The less of mutual commerce the better, upon this hypothesis. Protection and encouragement may be, and are, doubtless, sometimes, wise and beneficial, if kept within proper limits; but, when carried to an extravagant height, or the point of prohibition, the absurd character of the system manifests itself. Mr. Speaker has referred to the late Emperor Napoleon, as having attempted to naturalize the manufacture of cotton in France. He did not cite a more extravagant part of the projects of that ruler, that is, his attempt to naturalize the growth of that plant itself in France; whereas, we have understood that considerable districts in the south of France, and in Italy, of rich and productive lands, were at one time withdrawn from profitable uses, and

devoted to raising, at great expense, a little bad cotton. Nor have we been referred to the attempts, under the same system, to make sugar and coffee from common culinary vegetables; attempts which served to fill the print shops of Europe, and to show us how easy is the transition from what some think sublime, to that which all admit to be ridiculous. The folly of some of these projects has not been surpassed, nor hardly equalled, unless it be by the philosopher in one of the satires of Swift, who so long labored to extract sunbeams from cucumbers.*

The poverty and unhappiness of Spain have been attributed to the want of protection to her own industry. If by this it be meant that the poverty of Spain is owing to bad government and bad laws, the remark is, in a great measure, just. But these very laws are bad because they are restrictive, partial, and prohibitory. If prohibition were protection, Spain would seem to have had enough of it. Nothing can exceed the barbarous rigidity of her colonial system, or the folly of her early commercial regulations. Unenlightened and bigoted legislation, the multitude of holydays, miserable roads, monopolies on the part of government, restrictive laws, that ought long since to have been abrogated, are generally, and I believe truly, reckoned the principal causes of the bad state of the productive industry of Spain. Any partial improvement in her condition, or increase of her prosperity, has been, in all cases, the result of relaxation, and the abolition of what was intended for favor and protection.

In short, sir, the general sense of this age sets, with a strong current, in favor of freedom of commercial intercourse, and unrestrained individual action. Men yield up their notions of monopoly and restriction, as they yield up other prejudices, slowly and reluctantly; but they cannot withstand the general tide of opinion.

Let me now ask, sir, what relief this bill proposes to some of those great and essential interests of the country, the condition of which has been referred to as proof of national distress; and which condition, although I do not think it makes out a case of *distress*, yet does indicate depression.

And first, sir, as to our Foreign Trade. Mr. Speaker has stated that there has been a considerable falling off in the tonnage employed in that trade. This is true, lamentably true. In my opinion, it is one of those occurrences which ought to arrest our immediate, our deep, our most earnest attention. What does this bill propose for its relief? Sir, it proposes nothing but new burdens. It proposes to diminish its employment, and it proposes, at the same time, to augment its expense, by subjecting it to heavier taxation. Sir, there is no interest, in regard to which a stronger case for protection can be made out, than the navigating interest. Whether we look at its

* "The first man I saw was of a meagre aspect, with sooty hands and face. His hair and beard long, ragged, and singed in several places. His clothes, shirt, and skin, were all of the same color. He had been eight years upon a project for extracting sunbeams out of cucumbers, which were to be put into phials hermetically sealed, and let out to warm the air, in raw and inclement summers. He told me, he did not doubt, in eight years more, he should be able to supply the Governor's gardens with sunshine, at a reasonable rate; but he complained that his stock was low, and entreated me to give him something as an *encouragement to ingenuity*, especially as this had been a dear season for cucumbers."

present condition, which is admitted to be depressed; the number of persons connected with it, and dependent upon it for their daily bread; or its importance to the country in a political point of view, it has claims upon our attention which cannot be exceeded. But what do we propose to do for it? I repeat, sir, simply to burden and to tax it. By a statement which I have already submitted to the Committee, it appears that the shipping interest pays, annually, more than half a million of dollars in duties on articles used in the construction of ships. We propose to add nearly, or quite, fifty per cent. to this amount, at the very moment that we bring forth the languishing state of this interest, as a proof of national distress. Let it be remembered that our shipping employed in foreign commerce, has, at this moment, not the shadow of government protection. It goes abroad upon the wide sea to make its own way, and earn its own bread, in a professed competition with the whole world. Its resources are its own frugality, its own skill, its own enterprise. It hopes to succeed, if it shall succeed at all, not by extraordinary aid of government, but by patience, vigilance, and toil. This right arm of the nation's safety strengthens its own muscle by its own efforts, and by unwearied exertion in its own defence becomes strong for the defence of the country.

No one acquainted with this interest, can deny that its situation, at this moment, is extremely critical. We have left it hitherto to maintain itself or perish; to swim if it can, and to sink if it cannot. But at this moment of its apparent struggle, can we, as men, can we, as patriots, add another stone to the weight that threatens to carry it down? Sir, there is a limit to human power, and to human effort. I know the commercial marine of this country can do almost everything, and bear almost everything. Yet some things are impossible to be done; and some burdens may be impossible to be borne; and as it was the last ounce that broke the back of the camel, so the last tax, although it were even a small one, may be decisive as to the power of our marine, to sustain the conflict in which it is now engaged, with all the commercial nations on the globe.

Again, Mr. Chairman, the failures and the bankruptcies which have taken place in our large cities, have been mentioned as proving the little success attending *commerce*, and its general decline. But this bill has no balm for those wounds. It is very remarkable, that, when losses and disasters of certain manufacturers, those of iron, for instance, are mentioned, it is done for the purpose of invoking aid for the distressed. Not so with the losses and disasters of commerce; these last are narrated, and not unfrequently much exaggerated, to prove the ruinous nature of the employment, and to show that it ought to be abandoned, and the capital engaged in it turned to other objects.

It has been often said, sir, that our manufactures have to contend, not only against the natural advantages of those who produce similar articles in foreign countries, but also against the action of foreign governments, who have great political interest in aiding their own manufactures to suppress ours. But have not these governments as great an interest to cripple our marine, by preventing the growth of our commerce and navigation? What is it that makes us the object

of the highest respect, or the most suspicious jealousy, to foreign states? What is it that most enables us to take high relative rank among the nations? I need not say that this results, more than from anything else, from that quantity of military power which we can cause to be water borne, and of that extent of commerce, which we are able to maintain throughout the world.

Mr. Chairman, I am conscious of having detained the Committee much too long with these observations. My apology for now proceeding to some remarks upon the particular clauses of the Bill, is, that, representing a district, at once commercial and highly manufacturing, and being called upon to vote upon a Bill, containing provisions so numerous, and so various, I am naturally desirous to state as well what I approve, as what I would reject.

The first section proposes an augmented duty upon woollen manufactures. This, if it were unqualified, would no doubt be desirable to those who are engaged in that business. I have myself presented a petition from the woollen manufacturers of Massachusetts, praying an augmented *ad valorem* duty upon imported woollen cloths; and I am prepared to accede to that proposition, to a reasonable extent. But then this Bill proposes, also, a very high duty upon imported wool; and, as far as I can learn, a majority of the manufacturers are at least extremely doubtful whether, taking these two provisions together, the state of the law is not better for them now, than it would be if this Bill should pass. It is said, this tax on raw wool will benefit the agriculturist; but I know it to be the opinion of some of the best informed of that class, that it will do them more hurt than good. They fear it will check the manufacturer, and consequently check his demand for their article. The argument is, that a certain quantity of coarse wool, cheaper than we can possibly furnish, is necessary to enable the manufacturer to carry on the general business, and that if this cannot be had, the consequence will be, not a greater, but a less, manufacture of our own wool. I am aware that very intelligent persons differ upon this point; but, if we may safely infer from that difference of opinion, that the proposed benefit is at least doubtful, it would be prudent perhaps to abstain from the experiment. Certain it is, that the same course of reasoning has occurred, as I have before stated, on the same subject, when a renewed application was made to the English Parliament to repeal the duty on imported wool, I believe scarcely two months ago; those who support the application, pressing urgently the necessity of an unrestricted use of the cheap, imported raw material, with a view to supply, with coarse cloths, the markets of warm climates, such as those of Egypt and Turkey, and especially a vast new created demand in the South American states.

As to the manufactures of cotton, it is agreed, I believe, that they are generally successful. It is understood that the present existing duty operates pretty much as a prohibition over those descriptions of fabrics to which it applies. The proposed alteration would probably enable the American manufacturer to commence competition with higher priced fabrics; and so would, perhaps, an augmentation less than is here proposed. I consider the cotton manufactures not only to have reached, but to have passed, the point of competition. I re-

gard their success as certain, and their growth as rapid as the most impatient could well expect. If, however, a provision of the nature of that recommended here, were thought necessary to commence new operations in the same line of manufacture, I should cheerfully agree to it, if it were not at the cost of sacrificing other great interests of the country. I need hardly say, that whatever promotes the cotton and woollen manufactures, promotes most important interests of my constituents. They have a great stake in the success of those establishments, and as far as those manufactures are concerned, would be as much benefited by the provisions of this bill, as any part of the community. It is obvious too, I should think, that, for some considerable time, manufactures of this sort, to whatever magnitude they may rise, will be principally established in those parts of the country where population is most dense, capital most abundant, and where the most successful beginnings have been already made.

But if these be thought to be advantages, they are greatly counterbalanced by other advantages enjoyed by other portions of the country. I cannot but regard the situation of the West, as highly favorable to human happiness. It offers, in the abundance of its new and fertile lands, such assurances of permanent property and respectability to the industrious, it enables them to lay such sure foundations for a competent provision for their families, it makes such a nation of freeholders, that it need not envy the happiest and most prosperous of the manufacturing communities. We may talk as we will of well fed and well clothed daylaborers or journeymen; they are not, after all, to be compared, either for happiness, or respectability, with him who sleeps under his own roof, and cultivates his own feesimple inheritance.

With respect to the proposed duty on *Glass*, I would observe, that, upon the best means of judging which I possess, I am of opinion, that the Chairman of the Committee is right, in stating, that there is, in effect, a bounty upon the exportation of the British article. I think it entirely proper, therefore, to raise our own duty by such an amount as shall be equivalent to that bounty.

And here, Mr. Chairman, before proceeding to those parts of the Bill to which I most strenuously object, I will be so presumptuous, as to take up a challenge which Mr. Speaker has thrown down. He has asked us, in a tone of interrogatory indicative of the feeling of anticipated triumph, to mention any country in which manufactures have flourished, without the aid of prohibitory laws. He has demanded, if it be not policy, protection, ay, and prohibition, that have carried other states to the height of their prosperity, and whether any one has succeeded with such tame and inert legislation as ours. Sir, I am ready to answer this inquiry.

There is a country, not undistinguished among the nations, in which the progress of manufactures has been far more rapid than in any other, and yet unaided by prohibitions or unnatural restrictions. That country, the happiest which the sun shines on, is our own.

The woollen manufactures of England have existed from the early ages of the monarchy. Provisions, designed to aid and foster them, are in the blacklettered statutes of the Edwards and the Henrys. Ours, on the contrary, are but of yesterday; and yet, with no more

than the protection of existing laws, they are already at the point of close and promising competition. Sir, nothing is more unphilosophical than to refer us, on these subjects, to the policy adopted by other nations in a very different state of society, or to infer that what was judged expedient by them, in their early history, must also be expedient for us, in this early part of our own. This would be reckoning our age chronologically, and estimating our advance by our number of years; when, in truth, we should regard only the state of society, the knowledge, the skill, the capital, the enterprise, which belong to our times. We have been transferred from the stock of Europe, in a comparatively enlightened age, and our civilisation and improvement date back as early as her own. Her original history is, also, our original history; and if, since the moment of separation, she has gone ahead of us, in some respects, it may be said, without violating truth, that we have kept up in others, and, in others again, are ahead ourselves. We are to legislate, then, with regard to the present actual state of society; and our own experience shows us that, commencing manufactures at the present highly enlightened and emulous moment, we need not imitate the clumsy helps, with which, in less auspicious times, governments have sought to enable the ingenuity and industry of their people to hobble along.

The English cotton manufactures began about the commencement of the last reign. Ours can hardly be said to have commenced, with any earnestness, until the application of the power loom, in 1816, not more than eight years ago. Now, sir, I hardly need again speak of its progress, its present extent, or its assurance of future enlargement. In some sorts of fabrics we are already exporters, and the products of our manufactories are, at this moment, in the South American markets. We see, then, what *can* be done without prohibition or extraordinary protection, because we see what *has* been done; and I venture to predict that, in a few years, it will be thought wonderful that these branches of manufactures, at least, should have been thought to require additional aid from government.

Mr. Chairman: The best apology for laws of prohibition and laws of monopoly, will be found in that state of society, not only unenlightened, but sluggish, in which they are most generally established. Private industry, in those days, required strong provocatives, which governments were seeking to administer by these means. Something was wanted to actuate and stimulate men, and the prospects of such profits as would, in our times, excite unbounded competition, would hardly move the sloth of former ages. In some instances, no doubt, these laws produced an effect, which, in that period, would not have taken place without them. But our age is wholly of a different character, and its legislation takes another turn. Society is full of excitement; competition comes in place of monopoly; and intelligence and industry ask only for fair play and an open field. Profits, indeed, in such a state of things, will be small, but they will be extensively diffused; prices will be low, and the great body of the people prosperous and happy. It is worthy of remark, that, from the operation of these causes, commercial wealth, while it is increased beyond calculation in its general aggregate, is, at the same time, broken and diminished in its subdivisions. Commercial prosperity

should be judged of therefore rather from the extent of trade, than from the magnitude of its apparent profits. It has been remarked, that Spain, certainly one of the poorest nations, made very great profits on the amount of her trade; but with little other benefit than the enriching of a few individuals and companies. Profits to the English merchants engaged in the Levant and Turkey trade, were formerly very great, and there were richer merchants in England some centuries ago, considering the comparative value of money, than at the present highly commercial period. When the diminution of profits arises from the extent of competition, it indicates rather a salutary than an injurious change.*

The true course then, sir, for us to pursue, is, in my opinion, to consider what our situation is; what our means are; and how they can be best applied. What amount of population have we, in comparison with our extent of soil, what amount of capital, and labor at what price? As to skill, knowledge, and enterprise, we may safely take it for granted, that, in these particulars, we are on an equality with others. Keeping these considerations in view, allow me to examine two or three of those provisions of the bill to which I feel the strongest objections.

To begin with the article of iron. Our whole annual consumption of this article is supposed by the Chairman of the Committee, to be 48,000 or 50,000 tons. Let us suppose the latter. The amount of our own manufacture he estimates, I think, at 17,000 tons. The present duty on the imported article, is $15 per ton, and as this duty causes of course an equivalent augmentation of the price of the home manufacture, the whole increase of price is equal to $750,000 annually. This sum we pay on a raw material, and on an absolute necessary of life. The Bill proposes to raise the duty from $15 to $22 50 per ton, which would be equal to $1,125,000 on the whole annual consumption. So that, suppose the point of prohibition which is aimed at by some gentlemen to be attained, the consumers of the article would pay this last mentioned sum every year to the producers of it, over and above the price at which they could supply themselves with the same article from other sources. There would be no mitigation of this burden, except from the prospect, whatever that might be, that iron would fall in value, by domestic competition, after the importation should be prohibited. It will be easy, I think, to show, that it cannot fall; and supposing for the present that it shall not, the result will be, that we shall pay annually a sum of $1,125,000, constantly augmented, too, by increased consumption of the article, *to support a business that cannot support itself.* It is of no consequence to the argument, that this sum is expended at home; so it would be, if we taxed the people to support any other useless and expensive establishment, to build another Capitol for example, or incur an un-

* "The present equable diffusion of moderate wealth cannot be better illustrated, than by remarking that in this age many palaces and superb mansions have been pulled down, or converted to other purposes, while none have been erected on a like scale. The numberless baronial castles and mansions, in all parts of England, now in ruins, may all be adduced as examples of the decrease of inordinate wealth. On the other hand, the multiplication of commodious dwellings, for the upper and middle classes of society, and the increased comforts of all ranks, exhibit a picture of individual happiness, unknown in any other age."—*Sir G. Blane's Letter to Lord Spencer, in* 1800.

necessary expense of any sort. The question still is, are the money, time, and labor, well laid out in these cases? The present price of iron at Stockholm, I am assured by importers, is $53 per ton on board, $48 in the yard before loading, and probably not far from $40 at the mines. Freight, insurance, &c. may be fairly estimated at $15, to which add our present duty of $15 more, and these two last sums, together with the cost on board at Stockholm, give $83 as the cost of Swedes iron in our market. In fact it is said to have been sold last year at $81 50 to $82 per ton. We perceive, by this statement, that the cost of the iron is doubled in reaching us from the mine in which it is produced. In other words, our present duty with the expense of transportation, gives an advantage to the American, over the foreign manufacturer, of one hundred per cent. Why then cannot the iron be manufactured at home? Our ore is said to be as good, and some of it better. It is under our feet, and the chairman of the committee tells us, that it might be wrought by persons who otherwise will not be employed. *Why then is it not wrought?* Nothing could be more sure of constant sale. It is not an article of changeable fashion, but of absolute, permanent necessity, and such, therefore, as would always meet a steady demand. Sir, I think it would be well for the chairman of the committee to revise his premises, for I am persuaded that there is an ingredient properly belonging to the calculation which he has mistated or omitted. Swedes iron in England pays a duty, I think, of about $27 per ton; yet it is imported in considerable quantities, notwithstanding the vast capital, the excellent coal, and, more important than all perhaps, the highly improved state of inland navigation in England; although I am aware that the English use of Swedes iron may be thought to be owing in some degree to its superior quality.

Sir, the true explanation of this, appears to me to lie in the different prices *of labor;* and here I apprehend is the grand mistake in the argument of the chairman of the committee. He says it would cost the nation, as a nation, nothing, to make our ore into iron. Now, I think it would cost us precisely that which we can worst afford; that is, great *labor*. Although bar iron is very properly considered a raw material in respect to its various future uses; yet, as bar iron, the principal ingredient in its cost is labor. Of manual labor, no nation has more than a certain quantity, nor can it be increased at will. As to some operations, indeed, its place may be supplied by machinery; but there are other services which machinery cannot perform for it, and which it must perform for itself. A most important question for every nation, as well as for every individual to propose to itself, is, how it can best apply that quantity of labor which it is able to perform? Labor is the great producer of wealth; it moves all other causes. If it call machinery to its aid, it is still employed not only in using the machinery, but in making it. Now, with respect to the quantity of labor, as we all know, different nations are differently circumstanced. Some need, more than anything, work for hands, others require hands for work; and if we ourselves are not absolutely in the latter class, we are still, most fortunately, very near it. I cannot find that we have those idle hands, of which the chairman of the committee speaks. The price of labor is a conclusive and un-

answerable refutation of that idea; it is known to be higher with us than in any other civilized state, and this is the greatest of all proofs of general happiness. Labor in this country is independent and proud. It has not to ask the patronage of capital, but capital solicits the aid of labor. This is the general truth, in regard to the condition of our whole population, although in the large cities there are, doubtless, many exceptions. The mere capacity to labor in common agricultural employments, gives to our young men the assurance of independence. We have been asked, sir, by the chairman of the committee, in a tone of some pathos, whether we will allow to the serfs of Russia and Sweden the benefit of making iron for us? Let me inform the gentleman, sir, that those same serfs do not earn more than *seven cents* a day, and that they work in these mines, for that compensation, because they are serfs. And let me ask the gentleman further, *whether we have any labor in this country that cannot be better employed than in a business which does not yield the laborer more than seven cents a day?* This, it appears to me, is the true question for our consideration. There is no reason for saying that we will work iron because we have mountains that contain the ore. We might for the same reason dig among our rocks for the scattered grains of gold and silver which might be found there. *The true inquiry is, can we produce the article in a useful state at the same cost, or nearly at the same cost, or at any reasonable approximation towards the same cost, at which we can import it.*

Some general estimates of the price and profits of labor, in those countries from which we import our iron, might be formed by comparing the reputed products of different mines, and their prices, with the number of hands employed. The mines of Danemora are said to yield about 4000 tons, and to employ in the mines twelve hundred workmen. Suppose this to be worth 50 dollars per ton; any one will find by computation that the whole product would not pay in this country, for one quarter part of the necessary labor. The whole export of Sweden was estimated, a few years ago, at 400,000 ship-pounds, or about 54,000 tons. Comparing this product with the number of workmen usually supposed to be employed in the mines which produce iron for exportation, the result will not greatly differ from the foregoing. These estimates are general, and might not conduct us to a precise result; but we know, from intelligent travellers, and eye-witnesses, that the price of labor in the Swedish mines, does not exceed seven cents a day.*

The true reason, sir, why it is not our policy to compel our citizens to manufacture our own iron, is, that they are far better em-

* The price of labor in Russia may be pretty well collected from Tooke's "View of the Russian Empire." "The workmen in the mines and the founderies are, indeed, all called master-people; but they distinguish themselves into masters, undermasters, apprentices, delvers, servants, carriers, washers, and separators. In proportion to their ability their wages are regulated, which proceed from 15 to upwards of 30 roubles per annum. The provisions which they receive from the magazines are deducted from this pay." The value of the rouble at that time (1799) was about 24 pence sterling, or 45 cents of our money.

"By the edict of 1799," it is added, "a laborer with a horse shall receive, daily, in summer, 20, and in winter 12 copecks; a laborer, without a horse, in summer, 10, in winter, 8, copecks."

A copeck is the hundredth part of a rouble, or about half a cent of our money. The price of labor may have risen, in some degree, since that period, but probably not much.

ployed. It is an unproductive business, and they are not poor enough to be obliged to follow it. If we had more of poverty, more of misery, and something of servitude, if we had an ignorant, idle, starving population, we might set up for iron makers against the world.

The committee will take notice, Mr. Chairman, that, under our present duty, together with the expense of transportation, our manufacturers are able to supply their own immediate neighbourhood; and this proves the magnitude of that substantial encouragement which these two causes concur to give. There is little or no foreign iron, I presume, used in the county of Lancaster. This is owing to the heavy expense of land carriage; and, as we recede farther from the coast, the manufacturers are still more completely secured, as to their own immediate market, against the competition of the imported article. But what they ask is to be allowed to supply the seacoast, at such a price as shall be formed by adding to the cost at the mines the expense of land carriage to the sea; and this appears to me most unreasonable. The effect of it would be to compel the consumer to pay the cost of two land transportations; for, in the first place, the price of iron, at the inland furnaces, will always be found to be at, or not much below, the price of the imported article in the seaport, and the cost of transportation to the neighbourhood of the furnace; and to enable the home product to hold a competition with the imported in the seaport, the cost of another transportation downward, from the furnace to the coast, must be added. Until our means of inland commerce be improved, and the charges of transportation by that means lessened, it appears to me wholly impracticable, with such duties as any one would think of proposing, to meet the wishes of the manufacturers of this article. Suppose we were to add the duty proposed by this bill, although it would benefit the capital invested in works near the sea, and the navigable rivers, yet the benefit would not extend far in the interior. Where, then, are we to stop, or what limit is proposed to us?

The freight of iron has been afforded from Sweden to the United States as low as eight dollars per ton. This is not more than the price of fifty miles land carriage. Stockholm, therefore, for the purpose of this argument, may be considered as within fifty miles of Philadelphia. Now, it is at once a just and a strong view of this case, to consider, that there are, within fifty miles of our market, vast multitudes of persons who are willing to labor in the production of this article for us, at the rate of seven cents per day, while we have no labor which will not command, upon the average, at least five or six times that amount. The question is, then, shall we buy this article of these manufacturers, and suffer our own labor to earn its greater reward, or shall we employ our own labor in a similar manufacture, and make up to it, by a tax on consumers, the loss which it must necessarily sustain.

I proceed, sir, to the article of hemp. Of this we imported last year, in round numbers, 6,000 tons, paying a duty of $30 a ton, or $180,000 on the whole amount; and this article, it is to be remembered, is consumed almost entirely in the uses of navigation. The whole burden may be said to fall on one interest It is said we can

produce this article if we will raise the duties. But why is it not produced now; or why, at least, have we not seen some specimens? for the present is a very high duty, when expenses of importation are added. Hemp was purchased at St. Petersburg, last year, at $101 67 per ton. Charges attending shipment, &c. $14 25. Freight may be stated at $30 per ton, and our existing duty is $30 more. These three last sums, being the charges of transportation, amount to a protection of near 75 per cent. in favor of the home manufacturer, if there were any such. And we ought to consider, also, that the price of hemp at St. Petersburg is increased by all the expense of transportation from the place of growth to that port; so that probably the whole cost of transportation, from the place of growth to our market, including our duty, is equal to the first cost of the article; or, in other words, is a protection in favor of our own product of 100 per cent.

And since it is stated that we have great quantities of fine land for the production of hemp, of which I have no doubt, the question recurs, *why is it not produced?* I speak of the *water rotted hemp*, for it is admitted that that which is dew rotted is not sufficiently good for the requisite purposes. I cannot say whether the cause be in climate, in the process of rotting, or what else, but the fact is certain, that there is no American water rotted hemp in the market. We are acting, therefore, upon a hypothesis. Is it not reasonable that those who say that they *can* produce the article, shall at least prove the truth of that allegation before new taxes are laid on those who use the foreign commodity? Suppose this bill passes: the price of hemp is immediately raised $ 14 80 per ton, and this burden falls immediately on the ship builder; and no part of it, for the present, will go for the benefit of the American grower, because he has none of the article that can be used, nor is it expected that much of it will be produced for a considerable time. Still the tax takes effect upon the imported article; and the ship owners, to enable the Kentucky farmer to receive an additional $ 14 on his ton of hemp, *whenever he may be able to raise and manufacture it*, pay, in the meantime, an equal sum per ton into the Treasury on all the *imported* hemp which they are still obliged to use; and this is called "protection!" Is this just or fair? A particular interest is here burdened, not only for the benefit of another particular interest, but burdened also beyond that, for the benefit of the Treasury. It is said to be important for the country that this article should be raised in it; then, let the country bear the expense, and pay the bounty. If it be for the good of the whole, let the sacrifice be made by the whole, and not by a part. If it be thought useful and necessary, from political considerations, to encourage the growth and manufacture of hemp, government has abundant means of doing it. It might give a direct bounty, and such a measure would, at least, distribute the burden equally; or, as government itself is a great consumer of this article, it might stipulate to confine its own purchases to the home product, so soon as it should be shown to be of the proper quality. I see no objection to this proceeding, if it be thought to be an object to encourage the production. It might easily, and perhaps properly, be provided, by law, that the Navy should be supplied with American hemp, the quality being

good, at any price not exceeding, by more than a given amount, the current price of foreign hemp in our market. Everything conspires to render some such course preferable to the one now proposed. The encouragement in that way would be ample, and, if the experiment should succeed, the whole object would be gained; and if it should fail, no considerable loss or evil would be felt by any one.

I stated, some days ago, and I wish to renew the statement, what was the amount of the proposed augmentation of the duties on iron and hemp, in the cost of a vessel. Take the case of a common ship, of 300 tons, not coppered, nor copper fastened. It would stand thus, by the present duties:

14½ Tons of iron, for hull, rigging, and anchors, at $ 15 per ton	$ 217 50
10 Tons of hemp, at $ 30	300 00
40 Bolts Russia duck, at $ 2	80 00
20 Bolts Ravens duck, at $ 1 25	25 00
On articles of ship chandlery, cabin furniture, hardware, &c.	40 00
	$ 662 50

The bill proposes to add:

$ 7 40 per ton on iron, which will be	$ 107 30
$ 14 80 per ton on hemp, equal to	148 00
And on duck, by the late amendment of the bill, say 25 per cent	25 00
	$ 280 30

But, to the duties on iron and hemp, should be added those paid on copper, whenever that article is used. By the statement which I furnished the other day, it appeared that the duties received by government, on articles used in the construction of a vessel of 359 tons, with copper *fastenings*, amounted to $ 1056. With the augmentations of this Bill, they would be equal to $ 1400. Now, I cannot but flatter myself, Mr. Chairman, that, before the committee will consent to this new burden upon the shipping interest, it will very deliberately weigh the probable consequences. I would again urgently solicit its attention to the condition of that interest. We are told that Government has protected it, by discriminating duties, and by an exclusive right to the coasting trade. But it would retain the coasting trade, by its own natural efforts, in like manner, and with more certainty, than it now retains any portion of foreign trade. The discriminating duties are now abolished, and while they existed, they were nothing more than countervailing measures; not so much designed to give our navigation an advantage over that of other nations, as to put it upon an equality; and we have, accordingly, abolished ours, when they have been willing to abolish theirs. Look to the rate of freights. Were they ever lower, or even so low? I ask gentlemen who know, whether the harbor of Charleston, and the river of Savannah, be not crowded with ships seeking employment, and finding none? I would ask the gentlemen from New Orleans,

if their magnificent Mississippi does not exhibit, for furlongs, a forest of masts? The condition, sir, of the shipping interest is not that of those who are insisting on high profits, or struggling for monopoly; but it is the condition of men content with the smallest earnings, and anxious for their bread. The freight of cotton has formerly been three pence sterling, from Charleston to Liverpool, in time of peace. It is now I know not what, or how many, fractions of a penny; I think, however, it is stated at five-eighths. The producers, then, of this great staple, are able, by means of this navigation, to send it, for a cent a pound, from their own doors to the best market in the world.

Mr. Chairman, I will now only remind the committee that, while we are proposing to add new burdens to the shipping interest, a very different line of policy is followed by our great commercial and maritime rival. It seems to be announced as the sentiment of the Government of England, and undoubtedly it is its real sentiment, that the first of all manufactures is the manufacture of ships. A constant and wakeful attention is paid to this interest, and very important regulations, favorable to it, have been adopted within the last year, some of which I will beg leave to refer to, with the hope of exciting the notice, not only of the committee, but of all others who may feel, as I do, a deep interest in this subject. In the first place, a general amendment has taken place in the register acts, introducing many new provisions, and, among others, the following:

A direct mortgage of the interest of a ship is allowed, without subjecting the mortgagee to the responsibility of an owner.

The proportion of interest held by each owner is exhibited in the register, thereby facilitating both sales and mortgages, and giving a new value to shipping among the moneyed classes.

Shares, in the ships of copartnerships, may be registered as joint property, and subject to the same rules as other partnership effects.

Ships may be registered in the name of trustees, for the benefit of joint stock companies; and many other regulations are adopted with the same general view of rendering the mode of holding the property as convenient and as favorable as possible.

By another act, British registered vessels, of every description, are allowed to enter into the general and the coasting trade in the India seas, and may now trade to and from India, with any part of the world, except China.

By a third, all limitations and restrictions, as to latitude and longitude, are removed from ships engaged in the Southern whale fishery. These regulations, I presume, have not been made without first obtaining the consent of the East India Company; so true is it found, that real encouragement of enterprise oftener consists, in our days, in restraining or buying off monopolies and prohibitions, than in imposing or extending them.

The trade with Ireland is turned into a free coasting trade; light duties have been reduced, and various other beneficial arrangements made, and still others proposed. I might add, that, in favor of general commerce, and as showing their confidence in the principles of liberal intercourse, the British government has perfected the warehouse system, and authorised a reciprocity of duties with foreign states, at the discretion of the Privy Council.

This, sir, is the attention which our great rival is paying to these important subjects, and we may assure ourselves that, if we do not keep alive a proper sense of our own interests, she will not only beat us, but will deserve to beat us.

Sir, I will detain you no longer. There are some parts of this Bill which I highly approve; there are others in which I should acquiesce; but those to which I have now stated my objections appear to me so destitute of all justice, so burdensome and so dangerous to that interest which has steadily enriched, gallantly defended, and proudly distinguished us, that nothing can prevail upon me to give it my support

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NOTE.

Since the delivery of this Speech, an arrival has brought London papers containing the Speech of the English Chancellor of the Exchequer, (Mr. Robinson,) on the 23d February last, in submitting to Parliament the Annual Financial Statement. The author hopes he may be pardoned for adding the following extract from that Speech, as showing, pretty clearly, whether he was right, in his representation of the prevailing sentiment, in the English Government, on the general subject of prohibitory laws, and on the silk manufacture, and the wool tax, particularly.

"In the earlier part of what I have taken the liberty of addressing to the Committee, I alluded to that portion of this question which refers to a more free and liberal system of policy in matters of trade. To this division of the subject, I will now particularly invite attention. There are, as of course Honorable Gentlemen are aware, various branches of our commerce, loaded on the one hand with high duties upon the importation, and which, in an opposite direction, are encumbered with restrictions and prohibitions of different kinds. Amongst these is the article of wool (Hear.) As the law now stands, (which, by the way, as far as duty is concerned, is of very recent establishment,) the duty is 6d per lb.; it was originally one penny. This duty was imposed in the year 1819, not at all, as has been often in my opinion, and indeed in the opinion also of my noble friend at the head of the Treasury, very inaccurately stated, for the purpose of protection, but merely with a view to the increase of the revenue. But the parties interested, and who sought the abrogation of this law, were always told: 'You have no right to object to that duty, so long as you require that the produce of the British wool-grower should be confined to the consumption of this country,' (Hear.) It was never concealed, either in this House, or from the persons engaged in the trade; we constantly said, 'If you will consent to the removal of that impolitic restriction, as we consider it, upon the export of British wool, we will propose in Parliament the repeal of the duty.' The discussion of this subject led to a good deal of communication, in the last year, with the manufacturing interests, in different parts of the country: they held meetings, at which various resolutions were adopted: as may be supposed, it was found in the result, that there existed a discordance of opinion on the question at issue. Some were disposed to think that the repeal of the duty would be less of a benefit to them, than the removal of the restriction would be an evil; they were therefore desirous that the matter should be left just as it stands, and that no alteration should be made; they were anxious indeed to get rid of the duty, but not at the expense of the loss of the protection they imagined the restriction afforded them. Undoubtedly, however, a majority, I may say a decided majority, of the interests concerned in the woollen trade, were of opinion, that it would be beneficial to them to accede to that sort of compromise, that the duty should be repealed, and a free export of the article permitted. I confess, on the best and most deliberate view I have been able to take of the subject, I cannot see what reasonable objection there can be to adopt such a plan. (Hear, hear.) Certainly, a part of the plan I shall submit to Parliament, will be, to reduce the duty on foreign wool, from 6d. per pound, which it is at present, to 1d. per pound, as it was originally before the bill of 1819. I shall then recommend that British wool be allowed to be exported, on the payment of a small duty of 1d. also, to put them upon a level, and to keep the balance even between the two. Thus shall we sweep away needless, and, as I think, injurious statutes of restriction, and not

merely those, but penalties, oaths, and Heaven knows what besides. (Hear, hear.) All of these are exceedingly inconvenient, and, what is more, they do no possible good. Thus, the whole trade will be put upon a footing, which, I am quite confident, will turn out to be most beneficial to both parties—the grower of British wool and the manufacturer of the foreign article. On that matter I feel none of the apprehensions which at times have been expressed by both parties. I am satisfied that the consequence of the change will be a great extension of our woollen trade to every quarter of the world; and it is beyond my comprehension to imagine how such a state of things can be otherwise than advantageous to those who sell the raw material—(Hear!)—therefore I see nothing but good to result from the repeal of the duty, and the removal of the restriction; and I hope that, in endeavouring to accomplish this object, I shall be supported by the House. (Much cheering.) The loss I anticipate to the revenue from such a proceeding, is 350,000*l.* per annum. The next item to which I shall call the attention of the Committee, is one which, I own, appears to be of paramount importance in this view of the subject. I mean in that view of the subject which relates to the removal of restrictions. I allude to the item of silk. (Hear.) This trade is thus circumstanced: there is a very high duty on the raw material, and a positive prohibition of the consumption of the foreign manufactured article. I will, with the leave of the Committee, take the latter first; and, in the outset, I should wish to ask, where is the advantage of retaining the prohibitory system. (Hear, hear.) Where is the advantage of retaining it, looking at it either with reference to our intercourse with other nations, or with reference to our own domestic interests? (Hear.) For some years past there has certainly prevailed in this country, among its ablest statesmen and our most eminent writers, I should say, indeed, among all men of sense and reflection, a decided conviction that the maintenance of this prohibitory system is exceedingly impolitic. We have recently made a certain progress towards the removal of the evil. Are we to stop short? If we do stop short, what will foreign nations say, and justly say, of our conduct? Will they not say, that, though we profess liberality, we hate it in our hearts? that we have been endeavouring to cajole them to admit our own manufactures into their territories, while we continue rigidly by every means in our power, and by adhering closely to an antiquated system, to exclude theirs? When our practice is so at variance with our professions, it is impossible that they should give any credit to our assertions. Whenever a foreign state imposes a new duty on any of our manufactures, my right honorable friend, the President of the Board of Trade, is assaulted by representations from all quarters; instant measures are to be adopted to get the duty removed, and we are to remonstrate with the foreign power against its continuance. What would be the consequence? Our Ambassador is instructed to state to the foreign court at which he resides, that the new duty imposed is very injurious to British interests, and is viewed by this country in an unfriendly light. The answer of the foreign minister of course must be—'It may be so; we cannot help it; for how can we admit your goods, if you do not admit ours?' With such a reply, the British Ambassador must make his bow and retire, discomfited and ashamed; and I defy the ingenuity of man to invent an argument to refute the powerful *argumentum ad hominem* of the foreign minister. Other countries must conclude that we are only attempting to delude them; that it is all pretence and hypocrisy on our part; and that we do not really believe that there is practical soundness in the principles we abstractedly recommend. I myself am well satisfied of the practical soundness of those principles, and that we ought to take the first opportunity of adopting them. (Hear, hear) There never was so favorable an opportunity as the present for carrying our principles into effect, and for inviting foreign powers to act in accordance with them. Let us invite them to join with us in cutting the cords that tie down commerce to the earth, that it may soar aloft, unconfined and unrestricted. (Hear, hear.) If ever an opportunity for accomplishing this great good was afforded, it is the moment when I am speaking—and for God's sake let us embrace it. Are not our manufactures now in a state of universal activity? Is not everything in a condition of improvement? And is not capital in eager search of the means by which it may be profitably expended? (Hear, hear.) We have thus the finest opportunity for emancipating ourselves from ancient prejudices, and for making a new start in the race of wealth and prosperity. (Hear, hear.) On these grounds I am anxious to propose the adoption of this liberal system. But give me leave to ask, if there are not many others independent of those merely of a commercial nature, which strongly support it? In the first place, is it not perfectly well known, that, after all, these prohibitions, guard them and fence them with laws as you will, are, in point of fact evaded. (Hear, hear.) I remember, and I dare say many others have not forgotten, when the Hon. Member for Aberdeen, last year, even in this place, produced his Bandana handkerchief: he triumphantly unfurled the standard of smuggling; he hoisted, as it were, the colors of opposition to the Government and its laws, and having complacently blown his nose upon them, he returned them to his pocket. (Cheering and laughter.) He might not know at the time, though I reminded him of it afterwards, that there was not a gentleman near him at the time who had not a right to take possession of that handkerchief and export it to a foreign country. (Hear.) I mention this fact only as a strong practical illustration of the utter impossibility of carrying these prohibitions into complete effect. Everybody who

has been on some parts of the coast, has seen foreign vessels coming in from the neighbouring continent, and has, no doubt, often observed females step out of them, apparently of the most uncomfortable corpulency. In due time, and without any surgical aid, they were safely delivered of their burdens, and were restored to the natural slimness of their graceful figures. (Laughter.) Such I believe to be a very common practice; and there is, in fact, no end to the ingenuity of the devices to introduce contraband articles. Not only ingenuity is displayed, but fraud and crime—perjury, and every possible evil moral consequence. We all know, that crime begets crime; that, in whatever it may begin, *a progenies vitiosior* always springs up; *Nemo repente fuit turpissimus;* and a man who begins as a smuggler will probably end as something much worse. Perhaps he smuggles in the first instance only with the innocent purpose of making a present to a female friend or relative; but when a man is accustomed to the violation of the law, he will not find it very difficult, by degrees, to go further. He finds that he cannot effect his object without concealment—he takes a false oath, and becomes familiarized to that species of perjury. He commences by presents; then thinks he may turn the practice to pecuniary advantage; he smuggles upon a larger scale; he extends his adventures, and instead of gloves, shoes, or silks, he tries the experiment of more valuable articles. He makes money, and in time is induced to embark in more desperate and more criminal speculations. What is the consequence? You are obliged to keep up a navy to prevent contraband trade, a circumstance alluded to on a former night. Battle and bloodshed ensue—the loss of life, and perhaps deliberate murder. All this is very melancholy, and yet for what is it incurred? Under the fanciful notion that it is for the interest of the silk manufacture of this country. Why, Lord bless me, sir, we know very well, after all, that the British silk manufacture is so highly thought of abroad at this moment, that I believe, if a market were open where the goods of this kingdom should compete with those of any other, the British goods would drive all rivalship out of the field. (Hear, hear, hear.) If this be so, there is not the slightest pretence for saying that, to change the system, would be to injure our silk manufactures. Let us accompany it with a reduction of duty on the raw article, and there is not a foreign country that will not be glad to take our manufactured silks. I, therefore, hope that the House will think it full time to throw down this hollow, gilded, and distorted idol of imaginary protection; to hurl it from its base, and to establish on the same foundation the well-proportioned statue of commercial liberty. (Hear, hear, hear.)"

SPEECH

IN THE SENATE OF THE UNITED STATES, ON THE TARIFF BILL. MAY 9, 1828.

Mr. President,—This subject is surrounded with embarrassments, on all sides. Of itself, however wisely or temperately treated, it is full of difficulties; and these difficulties have not been diminished by the particular frame of this bill, nor by the manner hitherto pursued of proceeding with it. A diversity of interests exist, or is supposed to exist, in different parts of the country. This is one source of difficulty. Different opinions are entertained as to the constitutional power of Congress; this is another. And then, again, different members of the Senate have instructions which they feel bound to obey, and which clash with one another. We have this morning seen an honorable member from New York, an important motion being under consideration, lay his instructions on the table, and point to them, as his power of attorney and as containing the directions for his vote.

Those who intend to oppose this bill, under all circumstances, and in all or any forms, care not how objectionable it now is, or how bad it may be made. Others, finding their own leading objects satisfactorily secured by it, naturally enough press forward, without staying to consider, deliberately, how injuriously other interests may be affected. All these causes create embarrassments, and inspire just fears that a wise and useful result is hardly to be expected. There seems a strange disposition to run the hazard of extremes; and to forget, that in cases of this kind, measure, proportion, and degree are objects of inquiry, and the true rules of judgment. I have not had the slightest wish to discuss the measure; not believing that, in the present state of things, any good could be done by me, in that way. But the frequent declaration that this was altogether a New England measure, a bill for securing a monopoly to the capitalists of the north, and other expressions of a similar nature, have induced me to say a few words.

New England, sir, has not been a leader in this policy. On the contrary, she held back herself and tried to hold others back from it, from the adoption of the constitution to 1824. Up to 1824, she was accused of sinister and selfish designs, *because she discountenanced the progress of this policy.* It was laid to her charge, then, that having established her manufactures herself, she wished that others

should not have the power of rivalling her; and, for that reason, opposed all legislative encouragement. Under this angry denunciation against her, the act of 1824 passed. Now, the imputation is precisely of an opposite character. The present measure, is pronounced to be exclusively for the benefit of New England; to be brought forward by her agency, and designed to gratify the cupidity of her wealthy establishments.

Both charges, sir, are equally without the slightest foundation. The opinion of New England, up to 1824, was founded in the conviction that, on the whole, it was wisest and best, both for herself and others, that manufactures should make haste slowly. She felt a reluctance to trust great interests on the foundation of government patronage; for who could tell how long such patronage would last, or with what steadiness, skill, or perseverance it would continue to be granted? It is now nearly fifteen years since, among the first things which I ever ventured to say here, was the expression of a serious doubt whether this government was fitted, by its construction, to administer aid and protection to particular pursuits; whether, having called such pursuits into being by indications of its favor, it would not afterwards desert them, when troubles come upon them, and leave them to their fate. Whether this prediction, the result, certainly, of chance, and not of sagacity, will so soon be fulfilled, remains to be seen

At the same time it is true, that from the very first commencement of the government, those who have administered its concerns have held a tone of encouragement and invitation towards those who should embark in manufactures. All the Presidents, I believe without exception, have concurred in this general sentiment; and the very first act of Congress, laying duties of import, adopted the then unusual expedient of a preamble, apparently for little other purpose than that of declaring, that the duties which it imposed were imposed for the encouragement and protection of manufactures. When, at the commencement of the late war, duties were doubled, we were told that we should find a mitigation of the weight of taxation, in the new aid and succour which would be thus afforded to our own manufacturing labor. Like arguments were urged, and prevailed, but not by the aid of New England votes, when the tariff was afterwards arranged, at the close of the war, in 1816. Finally, after a whole winter's deliberation, the act of 1824 received the sanction of both houses of Congress, and settled the policy of the country. What, then, was New England to do? She was fitted for manufacturing operations, by the amount and character of her population, by her capital, by the vigor and energy of her free labor, by the skill, economy, enterprise, and perseverance of her people. I repeat, What was she, under these circumstances, to do? A great and prosperous rival in her near neighbourhood, threatening to draw from her a part, perhaps a great part, of her foreign commerce: was she to use, or to neglect, those other means of seeking her own prosperity which belonged to her character and her condition? Was she to hold out, forever, against the course of the government, and see herself losing on one side, and yet make no effort to sustain herself on the other? No, sir. Nothing was left to New England, after

the act of 1824, but to conform herself to the will of others. Nothing was left to her, but to consider that the government had fixed and determined its own policy; and that policy was *protection.*

New England, poor, in some respects, in others, is as wealthy as her neighbours. Her soil would be held in low estimation, by those who are acquainted with the valley of the Mississippi and some of the meadows of the south. But in industry, in habits of labor, skill, and in accumulated capital, the fruit of two centuries of industry, she may be said to be rich. After this final declaration—this solemn promulgation of the policy of the government, I again ask, What was she to do? Was she to deny herself the use of her advantages, natural and acquired? Was she to content herself with useless regrets? Was she longer to resist, what she could no longer prevent? Or, was she, rather, to adapt her acts to her condition; and seeing the policy of the government thus settled and fixed, to accommodate to it, as well as she could, her own pursuits and her own industry? Every man will see that she had no option. Every man will confess that there remained for her but one course. She not only saw this herself, but had, all along, foreseen, that if the system of protecting manufactures should be adopted, she must go largely into them. I believe, sir, almost every man from New England who voted against the law of 1824, declared, that if, notwithstanding his opposition to that law, it should still pass, there would be no alternative but to consider the course and policy of the government as then settled and fixed, and to act accordingly. The law did pass; and a vast increase of investment in manufacturing establishments was the consequence. Those who made such investments, probably entertained not the slightest doubt that as much as was promised would be effectually granted; and that if, owing to any unforeseen occurrence, or untoward event, the benefit designed by the law, to any branch of manufactures, should not be realized, it would furnish a fair case for the consideration of government. Certainly, they could not expect, after what had passed, that interests of great magnitude would be left at the mercy of the very first change of circumstances which might occur.

As a general remark, it may be said, that the interests concerned in the act of 1824, did not complain of their condition under it, excepting only those connected with the woollen manufactures. These did complain; not so much of the act itself, as of a new state of circumstances, unforeseen when the law passed, but which had now arisen to thwart its beneficial operations, as to them; although in one respect, perhaps, the law itself was thought to be unwisely framed.

Three causes have been generally stated, as having produced the disappointment experienced by the manufacturers of wool, under the law of 1824.

First, it is alleged, that the price of the raw material had been raised too high, by the act itself. This point had been discussed at the time, and although opinions varied, the result, so far as it depended on this part of the case, though it may be said to have been unexpected, was certainly not entirely unforeseen.*

* Extract from Mr. Webster's Speech, on the Tariff of 1824.—"This bill proposes, also, a very high duty upon imported wool; and as far as I can learn, a majority of the manufac-

But, secondly, the manufacturers imputed their disappointment to a reduction of the price of wool in England, which took place just about the date of the law of 1824. This reduction was produced by lowering the duty on imported wool from sixpence sterling to one penny sterling per pound. The effect of this is obvious enough; but in order to see the real extent of the reduction, it may be convenient to state the matter more particularly.

The meaning of our law was doubtless to give the American manufacturer an *advantage* over his English competitors. *Protection* must mean this, or it means nothing. The English manufacturer having certain advantages, on his side, such as the lower price of labor, and the lower interest of money; the object of our law was to counteract these advantages, by creating others, in behalf of the American manufacturer. Therefore, to see what was necessary to be done, in order that the American manufacturer might sustain the competition, a relative view of the respective advantages and disadvantages was to be taken. In this view the very first element to be considered was, what is to each party the cost of the raw material. On this, the whole must materially depend. Now when the law of 1824 passed, the English manufacturer paid a duty of sixpence sterling on imported wool. But in a very few days afterwards, this duty was reduced by Parliament, from sixpence to a penny. A reduction of five pence per pound, in the price of wool, was estimated in Parliament to be equal to a reduction of twenty-six per cent., *ad valorem*, on all imported wool; and this reduction, it is obvious, had its effect on the price of home-produced wool also. Almost, then, at the very moment, that the framers of the act of 1824, were raising the price of the raw material here, as that act did raise it, it was lowered in England, by the very great reduction of *twenty-six per cent.* Of course, this changed the whole basis of the calculation. It wrought a complete change in the relative advantages and disadvantages of the English and American competitors; and threw the preponderance of advantage, most decidedly, on the side of the English. If the American manufacturer had not vastly too great a preference, before this reduction took place, it is clear he had too little afterwards.

In a paper which has been presented to the Senate, and often referred to; a paper distinguished for the ability and clearness with which it enforces general principles—the Boston Report,—it is clearly proved, (what indeed is sufficiently obvious from the mere comparison of dates) that the British government did not reduce its duty on wool *because* of our act of 1824. Certainly this is true; but the effect of that reduction, on our manufactures, was the same precisely as if the British act had been designed to operate against them, and for no other purpose. I think it cannot be doubted that our law of 1824, and the reduction of the wool duty in England, taken together, left our manufactures in a worse condition than they were before. If there was any reasonable ground, therefore, for passing the law of 1824, there is now the same ground for some other measure; and this ground too, is reenforced by the considera-

turers are at least extremely doubtful whether, taking these two provisions together, the state of the law is not better for them now than it would be if this should pass "

tion of the hopes excited, the enterprises undertaken, and the capital invested, in consequence of that law.

So much, sir, for this cause of disappointment.

In the last place, it was alleged by the manufacturers, that they suffered from the mode of collecting the duties on woollen fabrics at the custom-houses. These duties are *ad valorem* duties. Such duties, from the commencement of the government, have been estimated by reference to the invoice, as fixing the value at the place whence imported. When not suspected to be false or fraudulent, the *invoice* is the regular proof of value. Originally this was a tolerably safe mode of proceeding. While the importation was mainly in the hands of American merchants, the *invoice* would of course, if not false or fraudulent, express the terms and the price of an actual purchase and sale. But an *invoice* is not, necessarily, an instrument expressing the sale of goods and their prices. If there be but a list, or catalogue, with prices stated by way of estimate, it is still an *invoice*, and within the law. Now the suggestion is, that the English manufacturer, in making out an invoice, in which prices are thus stated by himself, in the way of estimate merely, is able to obtain an important advantage over the American merchant who *purchases* in the same market, and whose invoice states, consequently, the actual prices, on the sale. And in proof of this suggestion it is alleged, that in the largest importing city in the union, a very great proportion, some say nearly all, of the woollen fabrics are imported on foreign account. The various papers which have come before us, praying for a tax on auction sales, aver that the invoice of the foreign importer is generally decidedly lower than that of the American importer; and that, in consequence of this and of the practice of sales at auction, the American merchant must be driven out of the trade. I cannot answer for the entire accuracy of these statements, but I have no doubt there is something of truth in them. The main facts have been often stated, and I have neither seen nor heard a denial of them.

Is it true, then, that nearly the whole importation of woollens is, in the largest importing city, in the hands of foreigners? Is it true, as stated, that the invoices of such foreign importers are, generally, found to be lower than those of the American importer? If these things be so, it will be admitted that there is reason to believe that undervaluations do take place; and that some corrective for the evil should be administered. I am glad to see that the American merchants themselves, begin to bestow attention to a subject, as interesting to them as it is to the manufacturers.

Under this state of things, sir, the law of the last session was proposed. It was confined, as I thought properly, to wool and woollens. It took up the great and leading subject of complaint, and nothing else. It was urged indeed, against that bill, that although much had been said of frauds at the custom-house, no provision was made in it for the prevention of such frauds. That is a mistake. The general frame of the bill was such, that, if skilfully drawn and adapted to its purpose, its tendency to prevent such frauds would be manifest. By the fixing of prices at successive points of graduation, or *minimums*, as they are called, the power of evading duties by

undervaluations would be most materially restrained. If these points, indeed, were sufficiently distant, it is obvious the duty would assume something of the certainty and precision of a specific duty. But this bill failed, and Congress adjourned, in March last year, leaving the subject where it had found it.

The complaints, which had given rise to the bill, continued; and in the course of the summer, a meeting of the wool-growers and wool-manufacturers assembled in Pennsylvania, and agreed on a petition to Congress. I do not feel it necessary, on behalf of the citizens of Massachusetts, to disclaim a participation in that meeting. Persons of much worth and respectability, attended it from Massachusetts, and its proceedings and results manifested, I think, a degree of temper and moderation, highly creditable to those who composed it.

But while the bill of last year was confined to that which alone had been a subject of complaint, the bill now before us is of a very different description. It proposes to raise duties on various other articles, besides wool and woollens. It contains some provisions which bear, with unnecessary severity, on the whole community; others which affect, with peculiar hardship, particular interests; while both of them benefit nobody and nothing but the treasury. It contains provisions, which, with whatever motive put into it, it is confessed are now kept in for the very purpose of destroying the bill altogether; or, with the intent to compel those who expect to derive benefit, to feel smart from it also. Probably such a motive of action has not often been avowed.

The wool manufacturers think they have made out a case, for the interposition of Congress. They happen to live, principally, at the north and east; and in a bill, professing to be for their relief, other provisions are found, which are supposed, (and supported, *because* they are supposed,) to be such as will press, with peculiar hardship, on that quarter of the country. Sir, what can be expected, but evil, when a temper like this prevails? How can such a hostile, retaliatory legislation be reconciled to common justice, or common prudence? Nay, sir, this rule of action seems carried still farther. Not only are clauses found, and continued in the bill, which oppress particular interests, but taxes are laid, also, which will be severely felt by the whole union; and this too with the same design, and for the same end before mentioned, of causing the smart of the bill to be felt. Of this description is the molasses tax; a tax, in my opinion, absurd and preposterous, in relation to any object of protection; needlessly oppressive to the whole community; and benefiting nobody on earth, but the treasury. And yet, here it is, and here it is kept, under an idea, conceived in ignorance, and cherished for a short lived triumph, that New England will be deterred, by this tax, from protecting her extensive woollen manufactures; or, if not, that the authors of this policy may at least have the pleasure, the high pleasure, of perceiving that she feels the effects of this bill.

Sir, let us look, for a moment, at this tax. The molasses imported into the United States amounts to THIRTEEN millions annually. Of this quantity, not more than THREE millions are distilled; the re-

maining TEN millions being consumed, as an article of wholesome food. The proposed tax is not to be laid for revenue. That is not pretended. It was not introduced for the benefit of the sugar planters. They are contented with their present condition, and have applied for nothing. What, then, was the object? Sir, the original professed object, was, to increase, by this new duty on molasses, the consumption of spirits distilled from grain. This, I say, was the object originally professed. But in this point of view, the measure appears to me to be preposterous. It is monstrous, and out of all proportion and relation of means to ends. It proposes to double the duty on the TEN millions of gallons of molasses which are consumed for food, in order that it may likewise double the duty on the THREE millions which are distilled into spirits; and all this, for the contingent and doubtful purpose of augmenting the consumption of spirits distilled from grain. I say contingent and doubtful purpose; because I do not believe any such effect will be produced. I do not think a hundred gallons more of spirits distilled from grain will find a market in consequence of this tax on molasses. The debate, here and elsewere, has shown that, I think, clearly. But suppose some slight effect of that kind should be produced; is it so desirable an object, as that it should be sought by such means? Shall we tax food, to encourage intemperance? Shall we raise the price of a wholesome article of sustenance, of daily consumption, especially among the poorer classes, in order that we may enjoy a mere chance of causing these same classes to use more of our homemade ardent spirits?

Sir, the bare statement of this question puts it beyond the reach of all argument. No man will seriously undertake the defence of such a tax. It is better, much more candid certainly, to admit, as has been admitted, that, obnoxious as it is, and abominable as it is, it is kept in the bill with a special view to its effects on New England votes, and New England interests.

The bill also takes away all the drawback, allowed by existing laws, on the exportation of spirits distilled from molasses; and this, it is supposed, and truly supposed, will affect New England. It will considerably affect her; for the exportation of such spirits is a part of her trade, and though not great in amount, it is a part which mingles usefully with the exportation of other articles, assists to make out variety of cargo, and finds a market in the North of Europe, the Mediterranean, and in South America. This exportation the bill proposes entirely to destroy.

The increased duty on molasses, while it thus needlessly and wantonly enhances the price to the consumer, may affect also, in a greater or less degree, the importation of that article; and be thus injurious to the commerce of the country. The importation of molasses, in exchange for lumber, provisions, and other articles of our own production, is one of the largest portions of our West India trade; a trade, it may be added, though of small profit, yet of short voyages, suited to small capitals, employing many hands, and much navigation; and the earliest and oldest branch of our foreign commerce. That portion of this trade which we now enjoy is conducted on the freest and most liberal principles. The exports which

sustain it are from the East, the South, and the West; every part of the country having, thus, an interest in its continuance and extension. A market for these exports, to any of these portions of the country, is infinitely of more importance to it than all the benefit to be expected from the supposed increased consumption of spirits distilled from grain.

Yet, sir, this tax is to be kept in the bill, that New England may be made *to feel*. Gentlemen who hold it to be wholly unconstitutional to lay any tax, whatever, for the purposes intended by this bill, yet cordially vote for this tax. An honorable gentleman from Maryland, (Mr. Smith,) calls the whole bill a "bill of abominations." This tax, he agrees, is one of its abominations, yet he votes for it. Both the gentlemen from North Carolina have signified their dissatisfaction with the bill, yet they have both voted to double the tax on molasses. Sir, do gentlemen flatter themselves that this course of policy can answer their purposes? Do they not perceive, that such a mode of proceeding, with a view to such avowed objects, must waken a spirit, that shall treat taunt with scorn, and bid menace defiance? Do they not know, if they do not, it is time they did, that a policy like this, avowed with such self satisfaction, persisted in with a delight which should only accompany the discovery of some new and wonderful improvement in legislation, will compel every New England man to feel that he is degraded and debased, if he does not resist it?

Sir, gentlemen mistake us. They greatly mistake us. To those who propose to conduct the affairs of government, and to enact laws on such principles as these, and for such objects as these, New England, be assured, will exhibit, not submission, but resistance; not humiliation, but disdain. Against her, depend on it, nothing will be gained by intimidation. If you propose to suffer, yourselves, in order that she may be made to suffer also, she will bid you come on—she will meet challenge, with challenge; she will invite you to do your worst, and your best, and to see who will hold out longest. She has offered you every one of her votes in the Senate to strike out this tax on molasses. You have refused to join her, and to strike it out. With the aid of the votes of any one southern state, for example of North Carolina, it could have been struck out. But North Carolina has refused her votes for this purpose. She has voted to keep the tax in, and to keep it in at the highest rate. And yet, sir, North Carolina, whatever she may think of it, is fully as much interested in this tax as Massachusetts. I think, indeed, she is more interested, and that she will feel it more heavily and sorely. She is herself a great consumer of the article, throughout all her classes of population. This increase of the duty will levy on her citizens a new tax of fifty thousand dollars a year, or more; although her Representatives on this floor have so often told us that her people are now poor, and already borne down with taxes. North Carolina will feel this tax also in her trade, for what of foreign commerce has she, more useful to her than the West India market for her provisions and lumber? And yet the gentlemen from North Carolina insist on keeping this tax in the bill. Let them not, then, complain. Let them not hereafter, call it the work of others. It

is their own work. Let them not lay it to the manufacturers. The manufacturers have had nothing to do with it. Let them not lay it to the wool-growers. The wool-growers have had nothing to do with it. Let them not lay it to New England New England has done nothing but to oppose it, and to ask them to oppose it also. No, sir; let them take it to themselves. Let them enjoy the fruit of their own doings. Let them assign their motives, for thus taxing their own constituents, and abide their judgment; but do not let them flatter themselves that New England cannot pay a molasses tax as long as North Carolina chooses that such a tax shall be paid.

Sir, I am sure there is nobody here, envious of the prosperity of New England, or who would wish to see it destroyed. But if there be such anywhere, I cannot cheer them by holding out the hope of a speedy accomplishment of their wishes. The prosperity of New England, like that of other parts of the country, may, doubtless, be affected injuriously by unwise or unjust laws. It may be impaired, especially, by an unsteady and shifting policy, which fosters particular objects to-day, and abandons them to-morrow. She may advance faster, or slower; but the propelling principle, be assured, is in her, deep fixed, and active. Her course is onward and forward. The great powers of free labor, of moral habits, of general education, of good institutions, of skill, enterprise, and perseverance are all working with her, and for her; and on the small surface which her population covers, she is destined, I think, to exhibit striking results of the operation of these potent causes, in whatever constitutes the happiness, or belongs to the ornament of human society.

Mr. President, this tax on molasses will benefit the treasury, though it will benefit nobody else. Our finances will, at least, be improved by it. I assure the gentlemen, we will endeavour to use the funds thus to be raised properly and wisely, and to the public advantage. We have already passed a bill for the Delaware breakwater; another is before us, for the improvement of several of our harbors; the Chesapeake and Ohio canal bill has been brought into the Senate, while I have been speaking; and next session we hope to bring forward the breakwater at Nantucket. These appropriations, sir, will require pretty ample means ; it will be convenient to have a well supplied treasury; and I state for the especial consolation of the honorable gentlemen from North Carolina, that so long as they choose to compel their constituents, and my constituents, to pay a molasses tax, the proceeds thereof shall be appropriated, as far as I am concerned, to valuable national objects, in useful and necessary works of internal improvements.

Mr. President, in what I have now said, I have but followed where others have led, and compelled me to follow. I have but exhibited to gentlemen the necessary consequences of their own course of proceeding. But this manner of passing laws is wholly against my own judgment, and repugnant to all my feelings. And I would, even now, once more solicit gentlemen to consider, whether a different course would not be more worthy of the Senate, and more useful to the country. Why should we not act upon this bill, article by article, judge fairly of each, retain what a majority

approves, and reject the rest? If it be, as the gentleman from Maryland called it, "a bill of abominations," why not strike out as many of the abominations as we can? Extreme measures cannot tend to good. They must produce mischief. If a proper and moderate bill in regard to wool and woollens had passed last year, we should not now be in our present situation. If such a bill, extended perhaps to a few other articles, if necessity so required, had been prepared and recommended at this session, much, both of excitement and of evil, would have been avoided.

Nevertheless, sir, it is for gentlemen to judge for themselves. If, when the wool manufacturers think they have a fair right to call on Congress to carry into effect what was intended for them by the law of 1824, and when there is manifested some disposition to comply with what they thus request, the benefit cannot be granted, nevertheless, in any other manner than by inserting it in a sort of bill of pains and penalties—a "bill of abominations," it is not for me to attempt to reason down, what has not been reasoned up; but I must content myself with admonishing gentlemen that their policy is destined, in all probability, to terminate in their own sore disappointment.

I advert once more, sir, to the subject of wool and woollens, for the purpose of showing that, even in respect to that part of the bill, the interest mainly protected is not that of the manufacturers. On the contrary, it is that of the wool-growers. The wool-grower is vastly more benefited than the manufacturer. The interest of the manufacturer is treated as secondary, and subordinate, throughout the bill. Just so much, and no more, is done for him, as is supposed necessary to enable him to purchase and manufacture the wool. The agricultural interest, the farming interest, the interest of the sheep-owner, is the great object which the bill is calculated to benefit, and which it will benefit, if the manufacturer can be kept alive. A comparison of existing duties, with those proposed on the wool and on the cloth, will show how this part of the case stands.

At present, a duty of thirty per cent. *ad valorem* is laid on all wool costing ten cents per pound, or upwards; and a duty of fifteen per cent. on all wool under that price.

The present bill proposes a specific duty of four cents per pound, and also an *ad valorem* duty of fifty per cent. on all wool of every description.

The result of the combination of these two duties, is, that wool fit for making good cloths, and costing from thirty to forty cents per pound in the foreign market, will pay a duty, at least equal to *sixty per cent. ad valorem.* And wool costing less than ten cents in the foreign market, will pay a duty, on the average, of a *hundred per cent. ad valorem.*

Now, sir, these heavy duties are laid for the wool-grower. They are designed to give a spring to agriculture, by fostering one of its most important products.

But let us see what is done for the manufacturer, in order to enable him to manufacture the raw material, at prices so much enhanced.

As the bill passed the House of Representatives, the advance of duties on cloths, is supposed to have been not more than three per cent. on the minimum points. Taking the amount of duty to be now thirty-seven per cent. *ad valorem*, on cloths, this bill, as it came to us, proposed, if that supposition be true, only to carry it up to forty. Amendments, here adopted, have enhanced this duty, and are understood to have carried it up to a duty of forty-five, or perhaps fifty per cent. *ad valorem*. Taking it at the highest, the duty on the cloth is raised *thirteen* per cent.; while that on wool is raised in some instances *thirty*, and in some instances *eighty-five* per cent.; that is, in one case from thirty to sixty, and in the other from fifteen to a hundred. Now the calculation is said to be true, which supposes, that a duty of thirty per cent. on the raw material, enhances, by fifteen per cent., the cost of producing the cloth; the raw material being estimated, generally, to be equal to half the expense of the fabric. So that, while, by this bill, the manufacturer gains *thirteen* per cent. on the cloth, he would appear to lose *fifteen* per cent. on the same cloth by the increase in the price of the wool. And this not only would appear to be true, but would, I suppose, be actually true, were it not that the market may be open to the manufacturer, under this bill, for such cloths as may be furnished at prices intermediate, between the graduated prices established by the bill.

For example; few or no foreign cloths, it is supposed, costing more than fifty cents a yard and less than a dollar, will be imported; therefore, American cloths, worth more than fifty cents and less than a dollar, will find a market. So of the intervals, or intermediate spaces, between the other statute prices. In this mode it may be hoped that the manufacturers may be sustained, and rendered able to carry on the work of converting the raw material, the agricultural product of the country, into an article necessary and fit for use. And this statement, I think, sufficiently shows, that no farther benefit or advantage is intended for them, than such as shall barely enable them to accomplish that purpose; and that the object, to which all others have been made to yield, is the advantage of agriculture.

And yet, sir, it is on occasion of a bill thus framed, that a loud and ceaseless cry has been raised against what is called the cupidity, the avarice, the monopolizing spirit of New England manufacturers! This is one of the main "abominations of the bill;" to remedy which it is proposed to keep in the other abominations. Under the prospect of advantage held out by the law of 1824, men have ventured their fortunes, and their means of subsistence for themselves and families, in woollen manufactures. They have ventured investments in objects requiring a large out-lay of capital; in mills, houses, water-works and expensive machinery. Events have occurred, blighting their prospects, and withering their hopes. Events, which have deprived them of that degree of succour, which the legislature manifestly intended. They come here asking for relief against an unforeseen occurrence; for remedy against that, which Congress, if it had foreseen, would have prevented. And they are told, that what they ask is an abomination! They say that an interest important to them, and important to the country, and principally called into existence by the government itself, has received a severe shock,

under which it must sink, if the government will not, by reasonable means, endeavour to preserve what it has created. And they are met with a volley of hard names, a tirade of reproaches, and a loud cry againt capitalists, speculators and stock-jobbers! For one, I think them hardly treated; I think, and from the beginning have thought, their claim to be a fair one. With how much soever of undue haste, or even of credulity, they may be thought to have embarked in these pursuits, under the hopes held out by government, I do not feel it to be just that they should be abandoned to their fate on the first adverse change of circumstances; although I have always seen, and now see, how difficult, perhaps I should rather say how impossible, it is, for Congress to act, when such changes occur, in a manner at once efficient, but discreet; prompt, but yet moderate.

For these general reasons, and on these grounds, I am decidedly in favor of a measure which shall uphold and support, in behalf of the manufacturers, the law of 1824, and carry its benefits and advantages to the full extent intended. And though I am not altogether satisfied with the particular form of these enactments, I am willing to take them, in the belief that they will answer an essentially important and necessary purpose.

It is now my painful duty to take notice of another part of the bill, which I think in the highest degree objectionable and unreasonable; I mean the extraordinary augmentation of the duty on hemp. I cannot well conceive anything more unwise or ill-judged than this appears to me to be. The duty is already thirty-five dollars per ton; and the bill proposes a progressive increase, till it shall reach sixty dollars. This will be absolutely oppressive on the shipping interest, the great consumers of the article. When this duty shall have reached its maximum, it will create an annual charge of at least one hundred thousand dollars, falling not on the aggregate of the commercial interest, but on the ship owner. It is a very unequal burden. The navigation of the country has already a hard struggle, to sustain itself against foreign competition; and it is singular enough, that this interest, which is already so severely tried, which pays so much in duties, on hemp, duck, and iron, and which it is now proposed to put under new burdens, is the only interest which is subject to a direct tax by a law of Congress. The tonnage duty is such a tax. If this bill should pass in its present form, I shall think it my duty, at the earliest suitable opportunity, to bring forward a bill for the repeal of the tonnage duty. It amounts, I think, to a hundred and twenty thousand dollars a year; and its removal will be due, in all justice, to the ship owner, if he is to be made subject to a new taxation on hemp and iron.

But, objectionable as this tax is, from its severe pressure on a particular interest, and that at present a depressed interest, there are still farther grounds of dissatisfaction with it. It is not calculated to effect the object intended by it. If that object be the increase of the sale of the dew rotted American hemp, the increased duty will have little tendency to produce that result; because such hemp is so much lower in price, than imported hemp, that it must be already used for such purposes as it is fit for. It is said to be

selling for one hundred and twenty dollars per ton; while the imported hemp commands two hundred and seventy dollars. The proposed duty, therefore, cannot materially assist the sale of American hemp of this quality and description.

But the main reason given for the increase, is, the encouragement of American water-rotted hemp. Doubtless, this is an important object; but I have seen nothing to satisfy me that it can be obtained, by means like this. At present, there is produced in the country no considerable quantity of water-rotted hemp. It is problematical, at best, whether it can be produced under any encouragement. The hemp may be grown, doubtless, in various parts of the United States, as well as in any country in the world; but the process of preparing it for use, by water-rotting, I believe to be more difficult and laborious than is generally thought among us. I incline to think, that, happily for us, labor is in too much demand, and commands too high prices, to allow this process to be carried on profitably. Other objections, also, beside the amount of labor required, may, perhaps, be found to exist, in climate, and in the effects liable to be produced on health, in warm countries, by the nature of the process. But whether there be foundation for these suggestions, or not, the fact still is, that we do not produce the article. It cannot, at present, be had at any price. To augment the duty, therefore, on foreign hemp, can only have the effect of compelling the consumer to pay so much more money into the treasury. The proposed increase, then, is doubly objectionable ; first, because it creates a charge, not to be borne equally by the whole country, but a new and heavy charge, to be borne exclusively by one particular interest ; and, second, because, that of the money raised by this charge, little or none goes to accomplish the professed object, by aiding the hemp grower; but the whole, or nearly the whole, falls into the treasury. Thus the effect will be in no way proportioned to the cause, nor the advantage obtained by some, at all equal to the hardship imposed on others. While one interest will suffer much, the other interest will gain little or nothing.

I am quite willing to make a thorough and fair experiment, on the subject of water-rotted hemp; but I wish, at the same time, to do this in a manner that shall not oppress individuals, or particular classes. I intend, therefore, to move an amendment, which will consist in striking out so much of the present bill as raises the duty on hemp, higher than it is at present, and in inserting a clause, making it the duty of the Navy Department to purchase, for the public service, American water-rotted hemp, whenever it can be had of a suitable quality; provided it can be purchased at a rate not exceeding, by more than twenty per cent., the current price of imported hemp, of the same quality. If this amendment should be adopted, the ship-owner would have no reason to complain, as the price of the article would not be enchanced, to him; and at the same time, the hemp grower, who shall try the experiment, will be made sure of a certain market, and a high price. The existing duty of thirty-five dollars per ton will remain to be still borne by the ship-owner. The twenty per cent. advance, on the price of imported hemp, will be equal

to fifty dollars per ton; the aggregate will be eighty-five dollars; and this, it must be admitted, is a liberal and effective provision, and will secure everything which can be reasonably desired, by the hemp-grower, in the most ample manner.

But, if the bill should become a law, and go into operation in its present shape, this duty on hemp is likely to defeat its own object in another way. Very intelligent persons entertain the opinion, that the consequence of this high duty will be such, that American vessels, engaged in foreign commerce, will, to a great extent, supply themselves with cordage abroad. This, of course, will diminish the consumption at home, and thus injure the hemp-grower, and at the same time, the manufacturer of cordage. Again; there may be reason to fear, that as the duty is not raised on cordage manufactured abroad, such cordage may be imported, in greater or less degree, in the place of the unmanufactured article. Whatever view we take, therefore, of this hemp duty, it appears to me altogether objectionable.

Much has been said of the protection which the navigation of the country has received, from the discriminating duties on tonnage, and the exclusive enjoyment of the coasting trade. In my opinion, neither of these measures has materially sustained the shipping interest of the United States. I do not concur in the sentiments, on that point, quoted from Dr. Seybert's statistical work. Dr. Seybert was an intelligent and worthy man, and compiled a valuable book; but he was engaged in public life at a time, when it was more fashionable than it has since become, to ascribe efficacy to discriminating duties. The shipping interest in this country has made its way by its own enterprise. By its own vigorous exertion, it spread itself over the seas, and by the same exertion, it still holds its place there. It seems idle to talk of the benefit and advantage of discriminating duties, when they operate against us, on one side of the ocean, quite as much as they operate for us on the other. To suppose that two nations, having intercourse with each other, can secure, each to itself, a decided advantage in that intercourse, is little less than absurdity; and this is the absurdity of discriminating duties. Still less reason is there for the idea, that our own ship-owners hold the exclusive enjoyment of the coasting trade, only by virtue of the law, which secures it to their exclusive employment. Look at the rate of freights. Look at the manner in which this coasting trade is conducted, by our own vessels, and the competition which subsists between them. In a majority of instances, probably, these vessels are owned, in whole or in part, by those who navigate them. These owners are at home, at one end of the voyage; and repairs and supplies are thus obtained in the cheapest and most economical manner. No foreign vessels would be able to partake in this trade, even by the aid of preferences and bounties.

The shipping interest of this country requires only an open field, and a fair chance. Everything else it will do for itself. But, it has not a fair chance, while it is so severely taxed, in whatever enters into the necessary expense of building and equipment. In this respect, its rivals have advantages which may in the end prove to be

decisive against us. I entreat the Senate to examine and weigh this subject, and not go on, blindly, to unknown consequences. The English ship-owner is carefully regarded by his government, and aided and succoured, whenever and wherever necessary, by a sharp-sighted policy. Both he and the American ship-owner obtain their hemp from Russia. But observe the difference. The duty on hemp in England is but twenty-one dollars; here, it is proposed to make it sixty; notwithstanding its cost here is necessarily enhanced by an additional freight, proportioned to a voyage, longer than that which brings it to the English consumer, by the whole breadth of the Atlantic. Sir, I wish to invoke the Senate's attention, earnestly, to this subject; I would awaken the regard of the whole government, more and more, not only on this but on all occasions, to this great national interest; an interest, which lies at the very foundation, both of our commercial prosperity and our naval achievement

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SPEECH

UPON THE PANAMA MISSION; DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, APRIL, 1826.

The following Resolution being under consideration, in Committee of the Whole House upon the state of the Union, viz:

"*Resolved*, That in the opinion of the House it is expedient to appropriate the funds necessary to enable the President of the United States to send Ministers to the Congress of Panama."

Mr. McLane, of Delaware, submitted the following amendment thereto, viz:

"It being understood as the opinion of this House, that, as it has always been the settled policy of this Government, in extending our commercial relations with foreign nations, to have with them as little political connexion as possible, to preserve peace, commerce, and friendship, with all nations, and to form entangling alliances with none; the Ministers who may be sent shall attend at the said Congress in a diplomatic character merely; and ought not to be authorised to discuss, consider, or consult, upon any proposition of alliance, offensive or defensive, between this country and any of the Spanish American Governments, or any stipulation, compact, or declaration, binding the United States in any way, or to any extent, to resist interference from abroad, with the domestic concerns of the aforesaid Governments; or any measure which shall commit the present or future neutral rights or duties of these United States, either as may regard European nations, or between the several States of Mexico and South America: leaving the United States free to adopt, in any event which may happen, affecting the relations of the South American Governments, with each other, or with foreign nations, such measures as the friendly disposition cherished by the American People towards the People of those States, and the honor and interest of this nation may require;"

To which Mr. Rives proposed to add, after the words "aforesaid Governments," the following:

"Or any compact or engagement by which the United States shall be *pledged* to the Spanish American States, to maintain, by force, the principle that no part of the American continent is henceforward subject to colonization by any European power."—

The preceding motions to amend being under consideration, Mr. Webster addressed the Committee as follows:—

Mr. Chairman,—I am not ambitious of amplifying this discussion. On the contrary, it is my anxious wish to confine the debate, so far as I partake in it, to the real and material questions before us.

Our judgment of things is liable, doubtless, to be affected by our opinions of men. It would be affectation in me, or in any one, to claim an exemption from this possibility of bias. I can say, however, that it has been my sincere purpose to consider and discuss the present subject, with the single view of finding out what duty it de

volves upon me, as a member of the House of Representatives. If anything has diverted me from that sole aim, it has been against my intention.

I think, sir, that there are two questions, and two only, for our decision. The first is, whether the House of Representatives will assume the responsibility of withholding the ordinary appropriation, for carrying into effect an Executive measure, which the Executive department has constitutionally instituted? The second, whether if it will not withhold the appropriation, it will yet take the responsibility of interposing, with its own opinions, directions or instructions, as to the manner in which this particular Executive measure shall be conducted?

I am, certainly, in the negative, on both these propositions. I am neither willing to refuse the appropriation, nor am I willing to limit or restrain the discretion of the Executive, beforehand, as to the manner in which it shall perform its own appropriate constitutional duties. And, sir, those of us who hold these opinions have the advantage of being on the common highway of our national politics. We propose nothing new; we suggest no change; we adhere to the uniform practice of the government, as I understand it, from its origin. It is for those, on the other hand, who are in favor of either, or both, of the propositions, to show us the cogent reasons which recommend their adoption. The duty is on them, to satisfy the House and the country that there is something in the present occasion which calls for such an extraordinary and unprecedented interference.

The President and Senate have instituted a public mission, for the purpose of treating with foreign States. The Constitution gives to the President the power of appointing, with the consent of the Senate, Embassadors, and other public ministers. Such appointment is, therefore, a clear and unquestionable exercise of Executive power. It is, indeed, less connected with the appropriate duties of this House, than almost any other Executive act; because the office of a public minister is not created by any statute or law of our own government. It exists under the law of nations, and is recognised as existing by our Constitution. The acts of Congress, indeed, limit the salaries of public ministers; but they do no more. Everything else, in regard to the appointment of public ministers, their numbers, the time of their appointment, and the negotiations contemplated in such appointments, is matter for Executive discretion. Every new appointment to supply vacancies in existing missions, is under the same authority. There are, indeed, what we commonly term standing missions, so known in the practice of the government, but they are not made permanent by any law. All missions rest on the same ground. Now the question is, whether the President and Senate, having created this mission, or, in other words, having appointed the ministers, in the exercise of their undoubted constitutional power, this House will take upon itself the responsibility of defeating its objects, and rendering this exercise of Executive power void?

By voting the salaries, in the ordinary way, we assume, as it seems to me, no responsibility whatever. We merely empower

another branch of the government to discharge its own appropriate duties, in that mode which seems to itself most conducive to the public interests. We are, by so voting, no more responsible for the manner in which the negotiation shall be conducted, than we are for the manner in which one of the Heads of Department may discharge the duties of his office.

On the other hand, if we withhold the ordinary means, we do incur a heavy responsibility. We interfere, as it seems to me, to prevent the action of the Government, according to constitutional forms and provisions. It ought constantly to be remembered that our whole power, in the case, is merely incidental. It is only because public ministers must have salaries, like other officers, and because no salaries can be paid, but by our vote, that the subject is referred to us at all. The Constitution vests the power of appointment in the President and Senate; the law gives to the President even the power of fixing the amount of salary, within certain limits; and the only question, here, is upon the appropriation. There is no doubt that we have the power, if we see fit to exercise it, to break up the mission, by withholding the salaries; we have power also to break up the Court, by withholding the salaries of the Judges, or to break up the office of President, by withholding the salary provided for it by law. All these things, it is true, we have the power to do, since we hold the keys of the Treasury. But, then, can we rightfully exercise this power? The gentleman from Pennsylvania, (Mr. BUCHANAN,) with whom I have great pleasure in concurring on this part of the case, while I regret that I differ with him on others, has placed this question in a point of view which cannot be improved. These officers do, indeed, already exist. They are public ministers. If they were to negotiate a treaty, and the Senate should ratify it, it would become a law of the land, whether we voted their salaries or not. This shows that the Constitution never contemplated that the House of Representatives should act a part in originating negotiations, or concluding treaties.

I know, sir, it is a useless labor to discuss the kind of power which this House incidentally holds in these cases. Men will differ in that particular; and as the forms of public business and of the Constitution are such, that the power may be exercised by this House, there will always be some, or always may be some, who feel inclined to exercise it. For myself, I feel bound not to step out of my own sphere, and neither to exercise nor control any authority, of which the Constitution has intended to lodge the free and unrestrained exercise in other hands. Cases of extreme necessity, in which a regard to public safety is to be the supreme law, or rather to take place of all law, must be allowed to provide for themselves, when they arise. Reasoning from such possible cases, will shed no light on the general path of our constitutional duty.

Mr. Chairman: I have a habitual and very sincere respect for the opinions of the gentleman from Delaware. And I can say with truth, that he is the last man in the House from whom I should have looked for this proposition of amendment, or from whom I should have expected to hear some of the reasons which he has given in its support. He says, that, in this matter, the source from which the mea-

sure springs should have no influence with us whatever. I do not comprehend this; and I cannot but think the honorable gentleman has been surprised into an expression which does not convey his meaning. This measure comes from the Executive, and it is an appropriate exercise of Executive Power. How is it, then, that we are to consider it as entirely an open question for us; as if it were a legislative measure originating with ourselves? In deciding whether we will enable the Executive to exercise his own duties, are we to consider whether we should have exercised them in the same way ourselves? And if we differ in opinion with the President and Senate, are we on that account to refuse the ordinary means? I think not; unless we mean to say that we will exercise ourselves, all the powers of the Government.

But the gentleman argues, that although, generally, such a course would not be proper, yet, in the present case, the President has especially referred the matter to our opinion; that he has thrown off, or attempted to throw off, his own constitutional responsibility; or, at least, that he proposes to divide it with us; that he requests our advice, and that we, having referred that request to the Committee on Foreign Affairs, have now received from that Committee their Report thereon.

Sir, this appears to me a very mistaken view of the subject; but if it were all so—if our advice and opinion had thus been asked, it would not alter the line of our duty. We cannot take, though it were offered, any share in Executive duty. We cannot divide their own proper responsibility with other branches of the Government. The President cannot properly ask, and we cannot properly give, our advice, as to the manner in which he shall discharge his duties. He cannot shift the responsibility from himself; and we cannot assume it. Such a course, sir, would confound all that is distinct in the constitutional assignment of our respective functions. It would break down all known divisions of power, and put an end to all just responsibility. If the President were to receive directions or advice from us, in things pertaining to the duties of his own office, what becomes of his responsibility to us, and to the Senate? We hold the impeaching power. We are to bring him to trial in any case of maladministration. The Senate are to judge him by the Constitution and laws; and it would be singular, indeed, if, when such occasion should arise, the party accused should have the means of sheltering himself under the advice or opinions of his accusers. Nothing can be more incorrect, or more dangerous, than this pledging the House beforehand, to any opinion, as to the manner of discharging Executive duties.

But, sir, I see no evidence whatever, that the President has asked us to take this measure upon ourselves, or to divide the responsibility of it with him. I see no such invitation or request. The Senate having concurred in the mission, the President has sent a message, requesting the appropriation, in the usual and common form. Another message is sent, in answer to a call of the House, communicating the correspondence, and setting forth the objects of the mission. It is contended, that by this message he asks our advice, or refers the subject to our opinion. I do not so understand it.

Our concurrence, he says, by making the appropriation, is subject to our free determination. Doubtless it is so. If we determine at all, we shall determine freely; and the message does no more than leave to ourselves to decide how far we feel ourselves bound, either to support or to thwart the Executive Department, in the exercise of its duties. There is no message, no document, no communication to us, which asks for our concurrence, otherwise than as we shall manifest it by making the appropriation.

Undoubtedly, sir, the President would be glad to know that the measure met the approbation of the House. He must be aware, unquestionably, that all leading measures mainly depend for success on the support of Congress. Still, there is no evidence that on this occasion he has sought to throw off responsibility from himself, or that he desires us to be answerable for anything beyond the discharge of our own constitutional duties. I have already said, sir, that I know of no precedent for such a proceeding as the amendment proposed by the gentleman from Delaware. None which I think analogous has been cited. The resolution of the House, some years ago, on the subject of the slave-trade, is a precedent the other way. A committee had reported that, in order to put an end to the slave-trade, a mutual right of search might be admitted and arranged by negotiation. But this opinion was not incorporated, as the gentleman now proposes to incorporate his amendment, into the resolution of the House. The resolution only declared, in general terms, that the President be requested to enter upon such negotiations with other powers as he might deem expedient, for the effectual abolition of the African slave-trade. It is singular enough, and may serve as an admonition on the present occasion, that a negotiation having been concluded, in conformity to the opinions expressed, not, indeed, by the House, but by the committee, the treaty, when laid before the Senate, was rejected by that body.

The gentleman from Delaware himself says, that the Constitutional responsibility pertains alone to the Executive Department: and that none other has to do with it, as a public measure. These admissions seem to me to conclude the question; because, in the first place, if the Constitutional responsibility appertains alone to the President, he cannot devolve it on us, if he would; and because, in the second place, I see no proof of any intention, on his part, so to devolve it on us, even if he had the power.

Mr. Chairman: I will here take occasion, in order to prevent misapprehension, to observe, that no one is more convinced than I am, that it is the right of this House, and often its duty, to express its general opinion in regard to questions of foreign policy. Nothing, certainly, is more proper. I have concurred in such proceedings, and am ready to do so again. On those great subjects, for instance, which form the leading topics in this discussion, it is not only the right of the House to express its opinions, but I think it its duty to do so, if it should think the Executive to be pursuing a general course of policy which the House itself will not ultimately approve But that is something entirely different from the present suggestion. Here it is proposed to decide, by our vote, what shall be discussed by particular ministers, already appointed, when they shall meet the

ministers of the other powers. This is not a general expression of opinion. It is a particular direction, or a special instruction. Its operation is limited to the conduct of particular men, on a particular occasion. Such a thing, sir, is wholly unprecedented in our history. When the House proceeds, in the accustomed way, by general resolution, its sentiments apply, as far as expressed, to all public agents, and on all occasions. They apply to the whole course of policy, and must, necessarily, be felt everywhere. But if we proceed by way of direction to particular ministers, we must direct them all. In short, we must ourselves furnish, in all cases, diplomatic instructions.

We now propose to prescribe what our ministers shall discuss, and what they shall not discuss, at Panama. But there is no subject coming up for discussion at Panama, which might not also be proposed for discussion either here or at Mexico, or in the Capital of Colombia. If we direct what our ministers at Panama shall or shall not say on the subject of Mr. Monroe's declaration, for example, why should we not proceed to say also what our other ministers abroad, or our Secretary at home, shall say on the same subject? There is precisely the same reason for one, as for the other. The course of the House, hitherto, sir, has not been such. It has expressed its opinions, when it deemed proper to express them at all, on great, leading questions, by resolution, and in a general form. These general opinions, being thus made known, have doubtless always had, and such expressions of opinion doubtless always will have, their effect.—This is the practice of the Government. It is a salutary practice; but if we carry it farther, or rather if we adopt a very different practice, and undertake to prescribe to our public ministers what they shall discuss, and what they shall not discuss, we take upon ourselves that which, in my judgment, does not at all belong to us. I see no more propriety in our deciding now, in what manner these ministers shall discharge their duty, than there would have in our prescribing to the President and Senate what persons ought to have been appointed ministers.

An honorable member from Virginia, who spoke some days ago, (Mr. Rives,) seems to go still farther than the member from Delaware. He maintains, that we may distinguish between the various objects contemplated by the Executive in the proposed negotiation; and adopt some and reject others. And this high, delicate, and important trust, the gentleman deduces simply from our power to withhold the minister's salaries. The process of the gentleman's argument appears to me as singular as its conclusion. He founds himself on the legal maxim, that he who has the power to give, may annex whatever condition or qualification to the gift he chooses. This maxim, sir, would be applicable to the present case, if we were the sovereigns of the country; if all power were in our hands; if the public money were entirely our own; if our appropriation of it were mere grace and favor; and if there were no restraints upon us, but our own sovereign will and pleasure. But the argument totally forgets that we are ourselves but public agents; that our power over the Treasury is but that of stewards over a trust fund; that we have nothing to give, and therefore no gifts to limit, or qualify; that it is

as much our duty to appropriate to proper objects, as to withhold appropriations from such as are improper; and that it is as much, and as clearly, our duty to appropriate in a proper and Constitutional manner, as to appropriate at all.

The same honorable member advanced another idea, in which I cannot concur. He does not admit that confidence is to be reposed in the Executive, on the present occasion, because confidence, he argues, implies only, that not knowing ourselves what will be done in a given case by others, we trust to those who are to act in it, that they will act right; and as we know the course likely to be pursued in regard to this subject, by the Executive, confidence can have no place. This seems a singular notion of confidence; certainly is not my notion of that confidence which the Constitution requires one branch of the Government to repose in another. The President is not our agent, but like ourselves, the agent of the People. They have trusted to his hands the proper duties of his office: and we are not to take those duties out of his hands, from any opinion of our own that we should execute them better ourselves. The confidence which is due from us to the Executive, and from the Executive to us, is not personal, but official and Constitutional. It has nothing to do with individual likings or dislikings; but results from that division of power among departments, and those limitations on the authority of each, which belong to the nature and frame of our government.

It would be unfortunate, indeed, if our line of Constitutional action were to vibrate, backward and forward, according to our opinions of persons, swerving this way to day, from undue attachment, and the other way to-morrow, from distrust or dislike. This may sometimes happen from the weakness of our virtues, or the excitement of our passions; but I trust it will not be coolly recommended to us, as the rightful course of public conduct.

It is obvious to remark, Mr. Chairman, that the Senate have not undertaken to give directions or instructions in this case. That body is closely connected with the President in Executive measures. Its consent to these very appointments is made absolutely necessary by the Constitution; yet it has not seen fit, in this or any other case, to take upon itself the responsibility of directing the mode in which the negotiations should be conducted.

For these reasons, Mr. Chairman, I am for giving no instructions, advice, or directions, in the case. I prefer leaving it where, in my judgment, the Constitution has left it—to Executive discretion and Executive responsibility.

But, sir, I think there are other objections to the amendment. There are parts of it which I could not agree to, if it were proper to attach any such condition to our vote. As to all that part of the amendment, indeed, which asserts the neutral policy of the United States, and the inexpediency of forming alliances, no man assents to those sentiments more readily, or more sincerely, than myself. On these points, we are all agreed. Such is our opinion; such, the President assures us, in terms, is his opinion; such we know to be the opinion of the country. If it be thought necessary to affirm opinions which no one either denies or doubts, by a resolution of

the House, I shall cheerfully concur in it. But there is one part of the proposed amendment to which I could not agree, in any form. I wish to ask the gentleman from Delaware himself to reconsider it. I pray him to look at it again, and to see whether he means what it expresses or implies; for, on this occasion, I should be more gratified by seeing that the honorable gentleman himself had become sensible that he had fallen into some error, in this respect, than by seeing the vote of the House against him by any majority whatever.

That part of the amendment to which I now object, is that which requires, as a condition of the resolution before us, that the ministers "shall not be authorised to discuss, consider, or consult upon any measure which shall commit the present or future neutral rights or duties of these United States, either as may regard European nations, or between the several States of Mexico and South America."

I need hardly repeat, that this amounts to a precise instruction. It being understood that the ministers shall not be authorised to discuss particular subjects, is a mode of speech precisely equivalent to saying, provided the ministers be instructed, or the ministers being instructed, not to discuss those subjects. After all that has been said, or can be said, about this amendment being no more than a general expression of opinion, or abstract proposition, this part of it is an exact and definite instruction. It prescribes to public ministers the precise manner in which they are to conduct a public negotiation; a duty manifestly and exclusively belonging, in my judgment, to the Executive, and not to us.

But if we possessed the power to give instructions, this instruction would not be proper to be given. Let us examine it. The ministers shall not "discuss, consider, or consult," &c.

Now, sir, in the first place, it is to be observed, that they are not only not to agree to any such measure, but they are not to discuss it. If proposed to them, they are not to give reasons for declining it. Indeed they cannot reject it; they can only say they are not authorised to consider it. Would it not be better, sir, to leave these agents at liberty to explain the policy of our Government, fully and clearly, and to show the reasons which induce us to abstain, as far as possible, from foreign connexions, and to act, in all things, with a scrupulous regard to the duties of neutrality?

But again: they are to discuss no measure which may commit our neutral rights or duties. To commit is somewhat indefinite. May they not modify nor in any degree alter our neutral rights and duties? If not, I hardly know whether a common treaty of commerce could be negotiated; because all such treaties affect or modify, more or less, the neutral rights or duties of the parties; especially all such treaties as our habitual policy leads us to form. But I suppose the author of the amendment uses the word in a larger and higher sense. He means that the ministers shall not discuss or consider any measure which may have a tendency, in any degree, to place us in a hostile attitude towards any foreign State. And here, again, one cannot help repeating, that the injunction is, not to propose or assent to any such measure, but not to consider it, not to answer it, if proposed; not to resist it with reasons?

But, if this objection were removed, still the instruction could not properly be given. What important or leading measure is there, connected with our foreign relations, which can be adopted, without the possibility of committing us to the necessity of a hostile attitude? Any assertion of our plainest rights may, by possibility, have that effect. The author of the amendment seems to suppose that our pacific relations can never be changed, but by our own option. He seems not to be aware that other states may compel us, in defence of our own rights, to measures, which, in their ultimate tendency, may commit our neutrality. Let me ask, if the ministers of other powers, at Panama, should signify to our agents that it was in contemplation immediately to take some measure which these agents know to be hostile to our policy, adverse to our rights, and such as we could not submit to—should they be left free to speak the sentiments of their Government, to protest against the measure, and to declare that the United States would not see it carried into effect? Or should they, as this amendment proposes, be enjoined silence, let the measure proceed, and afterwards, when, perhaps, we go to war to redress the evil, we may learn that if our objections had been fairly and frankly stated, the step would not have been taken? Look, sir, to the very case of Cuba—the most delicate, and vastly the most important point in all our foreign relations. Do gentlemen think they exhibit skill or statesmanship, in laying such restraints as they propose on our ministers, in regard to this subject, among others? It has been made matter of complaint, that the Executive has not used, already, a more decisive tone towards Mexico and Colombia, in regard to their designs on this Island. Pray, sir, what tone could be taken, under these instructions? Not one word—not one single word could be said on the subject. If asked whether the United States would consent to the occupation of that Island by those republics, or to its transfer by Spain to a European power; or whether we should resist such occupation or such transfer, what could they say? "That is a matter we cannot discuss, and cannot consider—it would commit our neutral relations —we are not at liberty to express the sentiments of our Government on the subject: we have nothing at all to say." Is this, sir, what gentlemen wish, or what they would recommend?

If, sir, we give these instructions, and they should be obeyed, and inconvenience or evil result, who is answerable? And I suppose it is expected they will be obeyed. Certainly it cannot be intended to give them, and not to take the responsibility of consequences, if they be followed. It cannot be intended to hold the President answerable both ways; first, to obey our instructions, and, secondly, for having obeyed them, if evil comes from obeying them.

Sir, events may change. If we had the power to give instructions, and if these proposed instructions were proper to be given, before we arrive at our own homes, affairs may take a new direction, and the public interest require new and corresponding orders to our agents abroad.

This is said to be an extraordinary case, and, on that account, to justify our interference. If the fact were true, the consequence would not follow. If it be the exercise of a power assigned by the

Constitution to the Executive, it can make no difference whether the occasion be common or uncommon. But, in truth, there have been much stronger cases for the interference of the House, where, nevertheless, the House has not interfered. For example; in the negotiations for peace carried on at Ghent. In that case, Congress, by both Houses, had declared war, for certain alleged causes. After the war had lasted some years, the President, with the advice of the Senate, appointed ministers to treat of peace; and he gave them such instructions as he saw fit. Now, as the war was declared by Congress, and was waged to obtain certain ends, it would have been plausible to say that Congress ought to know the instructions under which peace was to be negotiated, that they might see whether the objects for which the war was declared, had been abandoned. Yet no such claim was set up. The President gave instructions, such as his judgment dictated, and neither House asserted any right of interference.

Sir, there are gentlemen in this House, opposed to this mission, who, I hope, will nevertheless consider this question of amendment on general Constitutional grounds. They are gentlemen of much estimation in the community, likely, I hope, long to continue in the public service; and, I trust, they will well reflect on the effect of this amendment on the separate powers and duties of the several departments of the government.

An honorable member from Pennsylvania, (Mr. Hemphill,) has alluded to a resolution introduced by me the session before the last. I should not have referred to it myself, had he not invited the reference; but I am happy in the opportunity of showing how that resolution coincides with everything which I say to day What was that resolution? When an interesting people were struggling for national existence against a barbarous despotism, when there were good hopes, (hopes, yet, I trust, to be fully realized,) of their success, and when the Holy Alliance had pronounced against them certain false and abominable doctrines, I moved the House to resolve —what? Simply, that provision ought to be made by law to defray the expense of an agent or commissioner to that country, whenever the President should deem it expedient to make such appointment. Did I propose any instruction to the President, or any limit on his discretion? None at all, sir; none at all. What resemblance then can be found between that resolution and this amendment? Let those who think any such resemblance exists, adopt, if they will, the words of the resolution, as a substitute for this amendment. We shall gladly take them.

I am, therefore, Mr. Chairman, against the amendment; not only as not being a proper manner of exercising any power belonging to this House; but also as not containing instructions fit to be given, if we possessed the power of giving them. And as my vote will rest on these grounds, I might terminate my remarks here: but the discussion has extended over a broader surface, and following where others have led, I will ask your indulgence to a few observations on the more general topics of the debate.

Mr. Chairman: it is our fortune to be called upon to act our part, as public men, at a most interesting era in human affairs. The

short period of your life, and of mine, has been thick and crowded with the most important events. Not only new interests and new relations have sprung up among States, but new societies, new nations, and families of nations, have risen to take their places, and perform their parts, in the order and the intercourse of the world. Every man, aspiring to the character of a statesman, must endeavour to enlarge his views to meet this new state of things. He must aim at adequate comprehension, and instead of being satisfied with that narrow political sagacity, which, like the power of minute vision, sees small things accurately, but can see nothing else, he must look to the far horizon, and embrace, in his broad survey, whatever the series of recent events has brought into connexion, near or remote, with the country whose interests he studies to serve. We have seen eight States, formed out of colonies on our own continent, assume the rank of nations.

This is a mighty revolution, and when we consider what an extent of the surface of the globe they cover; through what climates they extend; what population they contain, and what new impulses they must derive from this change of government, we cannot but perceive that great effects are likely to be produced on the intercourse, and the interests of the civilized world. Indeed, it has been forcibly said, by the intelligent and distinguished statesman who conducts the foreign relations of England, that when we now speak of Europe and the world, we mean Europe and America; and that the different systems of these two portions of the globe, and their several and various interests, must be thoroughly studied and nicely balanced by the statesmen of the times.

In many respects, sir, the European and the American nations are alike. They are alike Christian States, civilized States, and commercial States. They have access to the same common fountains of intelligence; they all draw from those sources which belong to the whole civilized world. In knowledge and letters—in the arts of peace and war, they differ in degrees; but they bear, nevertheless, a general resemblance. On the other hand, in matters of government and social institution, the nations on this continent are founded upon principles which never did prevail, in considerable extent, either at any other time, or in any other place. There has never been presented to the mind of man a more interesting subject of contemplation than the establishment of so many nations in America, partaking in the civilisation and in the arts of the old world, but having left behind them those cumbrous institutions which had their origin in a dark and military age. Whatsoever European experience has developed favorable to the freedom and the happiness of man; whatsoever European genius has invented for his improvement or gratification; whatsoever of refinement or polish the culture of European society presents for his adoption and enjoyment—all this is offered to man in America, with the additional advantages of the full power of erecting forms of government on free and simple principles, without overturning institutions suited to times long passed, but too strongly supported, either by interests or prejudices, to be shaken without convulsions. This unprecedented state of things presents the happiest of all occasions for an attempt to establish national intercourse

upon improved principles; upon principles tending to peace, and the mutual prosperity of nations. In this respect America, the whole of America, has a new career before her. If we look back on the history of Europe, we see how great a portion of the last two centuries her States have been at war for interests connected mainly with her feudal monarchies; wars for particular dynasties; wars to support or defeat particular successions; wars to enlarge or curtail the dominions of particular crowns; wars to support or to dissolve family alliances; wars, in fine, to enforce or to resist religious intolerance. What long and bloody chapters do these not fill, in the history of European politics! Who does not see, and who does not rejoice to see, that America has a glorious chance of escaping, at least, these causes of contention? Who does not see, and who does not rejoice to see, that, on this continent, under other forms of government, we have before us the noble hope of being able, by the mere influence of civil liberty and religious toleration, to dry up these outpouring fountains of blood, and to extinguish these consuming fires of war. The general opinion of the age favors such hopes and such prospects. There is a growing disposition to treat the intercourse of nations more like the useful intercourse of friends; philosophy—just views of national advantage, good sense and the dictates of a common religion, and an increasing conviction that war is not the interest of the human race—all concur, to increase the interest created by this new accession to the list of nations.

We have heard it said, sir, that the topic of South American Independence is worn out, and threadbare. Such it may be, sir, to those who have contemplated it merely as an article of news, like the fluctuation of the markets, or the rise and fall of stocks. Such it may be, to those minds who can see no consequences following from these great events. But whoever has either understood their present importance, or can at all estimate their future influence—whoever has reflected on the new relations they introduce with other states—whoever, among ourselves especially, has meditated on the new relations which we now bear to them, and the striking attitude in which we ourselves are now placed, as the oldest of the American nations, will feel that the topic can never be without interest; and will be sensible that, whether we are wise enough to perceive it or not, the establishment of South American independence will affect all nations, and ourselves perhaps more than any other, through all coming time.

But, sir, although the independence of these new States seems effectually accomplished, yet a lingering and hopeless war is kept up against them by Spain. This is greatly to be regretted by all nations. To Spain it is, as every reasonable man sees, useless, and without hope. To the new States themselves it is burdensome and afflictive. To the commerce of neutral nations it is annoying and vexatious.—There seems to be something of the pertinacy of the Spanish character in holding on in such a desperate course. It reminds us of the seventy years during which Spain resisted the Independence of Holland. I think, however, that there is some reason to believe that the war approaches to its end. I believe that the measures adopted by our own government have had an effect in tending to produce that result. I understand, at least, that the question of recognition has

been taken into consideration by the Spanish government; and it may be hoped that a war, which Spain finds to be so expensive, which the whole world tells her is so hopeless, and which, if continued, now threatens her with new dangers, she may, ere long, have the prudence to terminate.

Our own course during this contest between Spain and her colonies is well known. Though entirely and strictly neutral, we were in favor of early recognition. Our opinions were known to the Allied Sovereigns when in Congress at Aix-la-Chapelle in 1818, at which time the affairs of Spain and her colonies were under consideration; and, probably, the knowledge of those sentiments, together with the policy adopted by England, prevented any interference by other powers at that time. Yet we have treated Spain with scrupulous delicacy. We acted on the case as one of civil war. We treated with the new governments as governments *de facto*. Not questioning the right of Spain to coerce them back to their old obedience, if she had the power, we yet held it to be our right to deal with them as with existing governments in fact, when the moment arrived at which it became apparent and manifest that the dominion of Spain over these, her ancient colonies, was at an end. Our right, our interest, and our duty, all concurred at that moment to recommend recognition—and we did recognise.

Now, sir, the history of this proposed Congress goes back to an earlier date than that of our recognition. It commenced in 1821; and one of the treaties now before us, proposing such a meeting, that between Colombia and Chili, was concluded in July, 1822, a few months only after we had acknowledged the independence of the new States. The idea originated, doubtless, in the wish to strengthen the union among the new governments, and to promote the common cause of all, the effectual resistance to Spanish authority. As independence was at that time their leading object, it is natural to suppose that they contemplated this mode of mutual intercourse and mutual arrangement, as favorable to the necessary concentration of purpose, and of action, for the attainment of that object. But this purpose of the Congress, or this leading idea, in which it may be supposed to have originated, has led, as it seems to me, to great misapprehensions as to its true character, and great mistakes in regard to the danger to be apprehended from our sending ministers to the meeting. This meeting, sir, is a Congress—not a Congress as the word is known to our Constitution and laws, for we use it in a peculiar sense; but as it is known to the law of nations. A Congress, by the law of nations, is but an appointed meeting for the settlement of affairs between different nations, in which the representatives or agents of each treat and negotiate as they are instructed by their own government. In other words, this Congress is a diplomatic meeting. We are asked to join no government—no legislature—no league—acting by votes. It is a Congress, such as those of Westphalia, of Nimeguen, of Ryswyck, or of Utrecht; or such as those which have been holden in Europe, in our own time. No nation is a party to any thing done in such assemblies, to which it does not expressly make itself a party. No one's rights are put at the disposition of any of the rest, or of all the rest. What ministers

agree to, being afterwards duly ratified at home, binds their government; and nothing else binds the government. Whatsoever is done, to which they do not assent, neither binds the ministers nor their government, any more than if they had not been present.

These truths, sir, seem too plain, and too commonplace to be stated. I find my apology only in those misapprehensions of the character of the meeting to which I have referred both now and formerly. It has been said that commercial treaties are not negotiated at such meetings. Far otherwise is the fact. Among the earliest of important stipulations made in favor of commerce and navigation, were those at Westphalia. And what we call the treaty of Utrecht, was a bundle of treaties, negotiated at that Congress; some of peace, some of boundary, and others of commerce. Again, it has been said, in order to prove that this meeting is a sort of confederacy, that such assemblies are out of the way of ordinary negotiation, and are always founded on, and provided for, by previous treaties. Pray, sir, what treaty preceded the Congress at Utrecht? and the meeting of our Plenipotentiaries with those of England at Ghent, what was that but a Congress? and what treaty preceded it? It is said, again, that there is no sovereign to whom our ministers can be accredited. Let me ask whether, in the case last cited, our ministers exhibited their credentials to the Mayor of Ghent? Sir, the practice of nations in these matters, is well known, and is free of difficulty. If the government be not present, agents or Plenipotentiaries interchange their credentials. And when it is said that our ministers at Panama will be, not ministers, but deputies, members of a deliberative body, not protected in their public character by the public law; when all this is said, propositions are advanced, of which I see no evidence whatever, and which appear to me to be wholly without foundation.

It is contended that this Congress, by virtue of the treaties which the new States have entered into, will possess powers other than those of a diplomatic character, as between those new States themselves. If that were so, it would be unimportant to us. The real question here is, what will be our relation with those States, by sending ministers to this Congress? Their arrangements among themselves will not affect us. Even if it were a government, like our old confederation, yet, if its members had authority to treat with us in behalf of their respective nations on subjects on which we have a right to treat, the Congress might still be a very proper occasion for such negotiations. Do gentlemen forget that the French Minister was introduced to our old Congress, met it in its sessions, carried on oral discussions with it, and treated with it in behalf of the French King? All that did not make him a member of it; nor connect him at all with the relations which its members bore to each other. As he treated on the subject of carrying on the war against England, it was, doubtless, hostile towards that power; but this consequence followed from the object and nature of the stipulations, and not from the manner of the intercourse. The Representatives of these South American States, it is said, will carry on belligerant councils at this Congress. Be it so; we shall not join in such councils. At the moment of invitation, our Government informed the

ministers of those States, that we could not make ourselves a party to the war between them and Spain, nor to councils for deliberating on the means of its further prosecution.

If, it is asked, we send ministers to a Congress composed altogether of belligerants, is it not a breach of neutrality? Certainly not: no man can say it is. Suppose, sir, that these ministers from the new states, instead of Panama, were to assemble at Bogota, where we already have a minister: their councils, at that place, might be belligerant, while the war should last with Spain. But should we, on that account, recall our minister from Bogota? The whole argument rests on this; that because, at the same time and place, the agents of the South American Governments may negotiate about their own relations with each other, in regard to their common war against Spain, therefore we cannot, at the same time and place, negotiate with them, or any of them, upon our own neutral and commercial relations. This proposition, sir, cannot be maintained; and, therefore, all the inferences from it fail.

But, sir, I see no proof that, as between themselves, the representatives of the South American States are to possess other than diplomatic powers. I refer to the treaties, which are essentially alike, and which have been often read.

With two exceptions, (which I will notice,) the articles of these treaties, describing the powers of the Congress, are substantially like those in the treaty of Paris, in 1814, providing for the Congress at Vienna. It was there stipulated that all the powers should send plenipotentiaries to Vienna, to regulate, in general Congress, the arrangements to complete the provisions of the present treaty. Now, it might have been here asked, how *regulate*? How regulate in general Congress?—regulate by votes? Sir, nobody asked such questions: simply because it was to be a Congress of plenipotentiaries. The two exceptions which I have mentioned, are, that this Congress is to act as a council and to interpret treaties; but there is nothing in either of these to be done which may not be done diplomatically. What is more common than diplomatic intercourse, to explain and to interpret treaties? Or what more frequent than that nations, having a common object, interchange mutual counsels and advice, through the medium of their respective ministers? To bring this matter, sir, to the test, let me ask, when these ministers assemble at Panama, can they do anything but according to their instructions? Have they any organization, any power of action, or any rule of action common to them all? No more, sir, than the respective ministers at the Congress of Vienna. Everything is settled by the use of the word Plenipotentiary. That proves the meeting to be diplomatic, and nothing else. Who ever heard of a plenipotentiary member of the Legislature?—a plenipotentiary burgess of a city?—or a plenipotentiary knight of the shire?

We may dismiss all fears, sir, arising from the nature of this meeting. Our agents will go there, if they go at all, in the character of ministers, protected by the public law, negotiating only for ourselves, and not called on to violate any neutral duty of their own government. If it be so that this meeting has other powers, in consequence of other arrangements between other States, of which I see no proof,

still, we are not party to these arrangements, nor can be in any way affected by them. As far as this government is concerned, nothing can be done but by negotiation, as in other cases.

It has been affirmed, that this measure, and the sentiments expressed by the Executive relative to its objects, are an acknowledged departure from the neutral policy of the United States. Sir, I deny there is an acknowledged departure, or any departure at all, from the neutral policy of the country. What do we mean by our neutral policy? Not, I suppose, a blind and stupid indifference to whatever is passing around us; not a total disregard to approaching events, or approaching evils, till they meet us full in the face. Nor do we mean, by our neutral policy, that we intend never to assert our rights by force. No, sir. We mean by our policy of neutrality, that the great objects of national pursuit with us are connected with peace. We covet no provinces; we desire no conquests; we entertain no ambitious projects of aggrandizement by war. This is our policy. But it does not follow, from this, that we rely less than other nations, on our own power to vindicate our own rights. We know that the last logic of kings is also our last logic; that our own interests must be defended and maintained by our own arm; and that peace or war may not always be of our own choosing. Our neutral policy, therefore, not only justifies but requires, our anxious attention to the political events which take place in the world, a skilful perception of their relation to our own concerns, and an early anticipation of their consequences, and firm and timely assertion of what we hold to be our own rights, and our own interests. Our neutrality is not a predetermined abstinence, either from remonstrances, or from force. Our neutral policy is a policy that protects neutrality, that defends neutrality, that takes up arms, if need be, for neutrality. When it is said, therefore, that this measure departs from our neutral policy, either that policy, or the measure itself, is misunderstood. It implies either that the object or the tendency of the measure is to involve us in the war of other States, which I think cannot be shown, or that the assertion of our own sentiments, on points affecting deeply our own interests, may place us in a hostile attitude with other States, and that, therefore, we depart from neutrality; whereas the truth is, that the decisive assertion, and the firm support of these sentiments, may be most essential to the maintenance of neutrality.

An honorable member from Pennsylvania thinks this Congress will bring a dark day over the United States. Doubtless, sir, it is an interesting moment in our history; but I see no great proofs of thick coming darkness. But the object of the remark seemed to be to show that the President himself saw difficulties on all sides, and, making a choice of evils, preferred rather to send ministers to this Congress, than to run the risk of exciting the hostility of the States by refusing to send. In other words, the gentleman wished to prove that the President intended an alliance; although such intention is expressly disclaimed.

Much commentary has been bestowed on the letters of invitation from the ministers. I shall not go through with verbal criticisms on these letters. Their general import is plain enough. I shall not

gather together small and minute quotations, taking a sentence here, a word there, and a syllable in a third place, dovetailing them into the course of remark, till the printed discourse bristles with inverted commas, in every line, like a harvest-field. I look to the general tenor of the invitations, and I find that we are asked to take part only in such things as concern ourselves. I look still more carefully to the answers, and I see every proper caution, and proper guard. I look to the message, and I see that nothing is there contemplated, likely to involve us in other men's quarrels, or that may justly give offence to any foreign State. With this, I am satisfied.

I must now ask the indulgence of the Committee to an important point in the discussion, I mean the Declaration of the President in 1823. Not only as a member of the House, but as a citizen of the country, I have an anxious desire that this part of our public history should stand in its proper light. Sir, in my judgment the country has a very high honor, connected with that occurrence, which we may maintain, or which we may sacrifice. I look upon it as a part of its treasures of reputation; and, for one, I intend to guard it.

Sir, let us recur to the important political events which led to that declaration, or accompanied it. In the fall of 1822, the allied sovereigns held their Congress at Verona. The great subject of consideration was the condition of Spain, that country then being under the government of the Cortes. The question was, whether Ferdinand should be reinstated in all his authority, by the intervention of foreign force. Russia, Prussia, France, and Austria, were inclined to that measure; England dissented and protested; but the course was agreed on, and France, with the consent of these other continental powers, took the conduct of the operation into her own hands. In the spring of 1823, a French army was sent into Spain. Its success was complete. The popular government was overthrown, and Ferdinand reestablished in all his power. This invasion, sir, was determined on, and undertaken, precisely on the doctrines which the allied monarchs had proclaimed the year before, at Laybach; and that is, that they had a right to interfere in the concerns of another State, and reform its government, in order to prevent the effects of its bad example; this bad example, be it remembered, always being the example of free government. Now, sir, acting on this principle of supposed dangerous example, and having put down the example of the Cortes in Spain, it was natural to inquire with what eyes they would look on the colonies of Spain, that were following still worse examples. Would King Ferdinand and his allies be content with what had been done in Spain itself, or would he solicit their aid, and was it likely they would grant it, to subdue his rebellious American Provinces.

Sir, it was in this posture of affairs, on an occasion which has already been alluded to, that I ventured to say, early in the session of December, 1823, that these allied monarchs might possibly turn their attention to America; that America came within their avowed doctrine, and that her examples might very possibly attract their notice. The doctrines of Laybach were not limited to any continent;

Spain had colonies in America, and having reformed Spain herself to the true standard, it was not impossible that they might see fit to complete the work by reconciling, in their way, the colonies to the mother country. Now, sir, it did so happen, that as soon as the Spanish King was completely reestablished, he did invite the co-operation of his allies, in regard to South America. In the same month of December, of 1823, a formal invitation was addressed by Spain to the courts of St. Petersburg, Vienna, Berlin, and Paris, proposing to establish a conference at Paris, in order that the Plenipotentiaries, there assembled, might aid Spain in adjusting the affairs of her revolted provinces. These affairs were proposed to be adjusted in such manner as should retain the sovereignty of Spain over them; and though the cooperation of the allies, by force of arms, was not directly solicited—such was evidently the object aimed at.

The King of Spain, in making this request to the members of the Holy Alliance, argued, as it had been seen he might argue. He quoted their own doctrines of Laybach; he pointed out the pernicious example of America; and he reminded them that their success, in Spain itself, had paved the way for successful operations against the spirit of liberty on this side the Atlantic.

The proposed meeting, however, did not take place. England had already taken a decided course; for, as early as October, Mr. Canning, in a conference with the French minister in London, informed him distinctly and expressly, that England would consider any foreign interference, by force or by menace, in the dispute between Spain and the colonies, as a motive for recognising the latter, without delay.

It is probable this determination of the English government was known here, at the commencement of the session of Congress; and it was under these circumstances, it was in this crisis, that Mr. Monroe's declaration was made. It was not then ascertained whether a meeting of the Allies would, or would not, take place, to concert with Spain the means of reestablishing her power; but it was plain enough they would be pressed by Spain to aid her operations; and it was plain enough also, that they had no particular liking to what was taking place on this side the Atlantic, nor any great disinclination to interfere. This was the posture of affairs; and, sir, I concur entirely in the sentiment expressed in the resolution, of a gentleman from Pennsylvania, (Mr. Markley,) that this declaration of Mr. Monroe was wise, seasonable, and patriotic.

It has been said, in the course of this debate, to have been a loose and vague declaration. It was, I believe, sufficiently studied. I have understood, from good authority, that it was considered, weighed, and distinctly and decidedly approved by every one of the President's advisers, at that time. Our government could not adopt, on that occasion, precisely the course which England had taken England threatened the immediate recognition of the Provinces, if the Allies should take part with Spain against them.—We had already recognised them. It remained, therefore, only for our government to say how we should consider a combination of the Allied Powers, to effect objects in America, as affecting ourselves; and the

message was intended to say, what it does say, that we should regard such combination as dangerous to us. Sir, I agree with those who maintain the proposition, and I contend against those who deny it, that the message did mean something; that it meant much; and I maintain, against both, that the declaration effected much good, answered the end designed by it, did great honor to the foresight, and the spirit of the government, and that it cannot now be taken back, retracted or annulled, without disgrace. It met, sir, with the entire concurrence, and the hearty approbation of the country. The tone which it uttered found a corresponding response in the breasts of the free people of the United States. That people saw, and they rejoiced to see, that, on a fit occasion, our weight had been thrown into the right scale, and that, without departing from our duty, we had done something useful, and something effectual, for the cause of civil liberty. One general glow of exultation—one universal feeling of the gratified love of liberty—one conscious and proud perception of the consideration which the country possessed, and of the respect and honor which belonged to it—pervaded all bosoms. Possibly the public enthusiasm went too far; it certainly did go far. But, sir, the sentiment which this declaration inspired was not confined to ourselves. Its force was felt everywhere, by all those who could understand its object, and foresee its effect. In that very House of Commons, of which the gentleman from South Carolina has spoken with such commendation, how was it there received? Not only, sir, with approbation, but, I may say, with no little enthusiasm. While the leading minister expressed his entire concurrence in the sentiments and opinions of the American President, his distinguished competitor in that popular body, less restrained by official decorum, and more at liberty to give utterance to all the feeling of the occasion, declared that no event had ever created greater joy, exultation, and gratitude, among all the free men in Europe; that he felt pride in being connected by blood and language, with the people of the United States; that the policy disclosed by the message, became a great, a free, and an independent nation; and that he hoped his own country would be prevented by no mean pride, or paltry jealousy, from following so noble and glorious an example.

It is doubtless true, as I took occasion to observe the other day, that this declaration must be considered as founded on our rights, and to spring mainly from a regard to their preservation. It did not commit us at all events to take up arms, on any indication of hostile feeling by the powers of Europe towards South America. If, for example, all the States of Europe had refused to trade with South America, until her States should return to their former allegiance, that would have furnished no cause of interference to us. Or if an armament had been furnished by the allies to act against provinces the most remote from us, as Chili or Buenos Ayres, the distance of the scene of action diminishing our apprehension of danger, and diminishing also our means of effectual interposition, might still have left us to content ourselves with remonstrance. But a very different case would have arisen, if an army, equipped and maintained by these powers, had been landed on the shores of the Gulf of Mexico, and commenced the war in our own immediate neighbourhood,

Such an event might justly be regarded as dangerous to ourselves, and, on that ground, to have called for decided and immediate interference by us. The sentiments and the policy announced by the declaration, thus understood, were, therefore, in strict conformity to our duties and our interest.

Sir, I look on the message of December, 1823, as forming a bright page in our history. I will neither help to erase it, or tear it out; nor shall it be, by any act of mine, blurred or blotted. It did honor to the sagacity of the government, and I will not diminish that honor. It elevated the hopes, and gratified the patriotism, of the people. Over those hopes I will not bring a mildew; nor will I put that gratified patriotism to shame.

But how should it happen, sir, that there should now be such a new-born fear, on the subject of this declaration? The crisis is over; the danger is past. At the time it was made, there was real ground for apprehension: now there is none. It was then possible, perhaps not improbable, that the allied powers might interfere with America. There is now no ground for any such fear. Most of the gentlemen who have now spoken on the subject, were at that time here. They all heard the declaration. Not one of them complained. And yet, now, when all danger is over, we are vehemently warned against the sentiments of the declaration.

To avoid this apparent inconsistency, it is, however, contended, that new force has been recently given to this declaration. But of this, I see no evidence whatever. I see nothing in any instructions or communications from our government changing the character of that declaration in any degree. There is, as I have before said, in one of Mr. Poinsett's letters, an inaccuracy of expression. If he has recited correctly his conversation with the Mexican minister, he did go too far: farther than any instruction warranted. But, taking his whole correspondence together, it is quite manifest that he has deceived nobody, nor has he committed the country. On the subject of a pledge, he put the Mexican minister entirely right. He stated to him, distinctly, that this government had given no pledge which others could call upon it to redeem. What could be more explicit? Again, sir: it is plain that Mexico thought us under no greater pledge than England: for the letters to the English and American ministers, requesting interference, were in precisely the same words. When this passage in Mr. Poinsett's letter was first noticed, we were assured there was and must be some other authority for it. It was confidently said he had instructions, authorising it, in his pocket. It turns out otherwise. As little ground is there to complain of anything in the Secretary's letter to Mr. Poinsett. It seems to me to be precisely what it should be. It does not, as has been alleged, propose any cooperation between the government of Mexico and our own. Nothing like it. It instructs our ministers to bring to the notice of the Mexican government the line of policy which we have marked out for ourselves—acting on our own grounds, and for our own interests; and to suggest to that government, acting on its own ground, and for its own interests, the propriety of following a similar course. Here, sir, is no alliance, nor even any cooperation.

So, again, as to the correspondence which refers to the appearance of the French fleet in the West India Seas. Be it remembered, that our government was contending, in the course of this correspondence with Mexico, for an equality in matters of commerce. It insisted on being placed, in this respect, on the same footing as the other South American States. To enforce this claim, our known friendly sentiments towards Mexico, as well as to the rest of the new States, were suggested—and properly suggested. Mexico was reminded of the timely declaration which had been made of these sentiments.—She was reminded that she herself had been well inclined to claim the benefit resulting from that declaration, when a French fleet appeared in the neighbouring seas; and she was referred to the course adopted by our government on that occasion, with an intimation that she might learn from it how the same government would have acted if other possible contingencies had happened. What is there, in all this, of any renewed pledge, or what is there of anything beyond the true line of our policy? Do gentlemen mean to say that the communication made to France, on this occasion, was improper? Do they mean to repel and repudiate that declaration? That declaration was, that we could not see Cuba transferred from Spain to another European power. If the House mean to contradict that—be it so. If it do not, then, as the government had acted properly in this case, it did furnish ground to believe it would act properly, also, in other cases, when they arose. And the reference to this incident or occurrence by the Secretary, was pertinent to the argument which he was pressing on the Mexican government.

I have but a word to say on the subject of the declaration against European colonization in America. The late President seems to have thought the occasion used by him for that purpose to be a proper one for the open avowal of a principle which had already been acted on. Great and practical inconveniences, it was feared, might be apprehended, from the establishment of new colonies in America, having a European origin and a European connexion. Attempts of that kind, it was obvious, might possibly be made, amidst the changes that were taking place, in Mexico, as well as in the more Southern States. Mexico bounds us, on a vast length of line, from the Gulf of Mexico to the Pacific Ocean. There are many reasons why it should not be desired by us, that an establishment, under the protection of a different power, should occupy any portion of that space. We have a general interest, that through all the vast territories rescued from the dominion of Spain, our commerce might find its way, protected by treaties with governments existing on the spot. These views, and others of a similar character, rendered it highly desirable to us, that these new States should settle it, as a part of their policy, not to allow colonization within their respective territories. True, indeed, we did not need their aid to assist us in maintaining such a course for ourselves; but we had an interest in their assertion and support of the principle as applicable to their own territories.

I now proceed, Mr. Chairman, to a few remarks on the subject of Cuba, the most important point of our foreign relations. It is

the hinge on which interesting events may possibly turn. I pray gentlemen to review their opinions on this subject before they fully commit themselves. I understood the honorable member from South Carolina to say, that if Spain chose to transfer this Island to any power in Europe, she had a right to do so, and we could not interfere to prevent it. Sir, this is a delicate subject. I hardly feel competent to treat it as it deserves; and I am not quite willing to state here all that I think about it. I must, however, dissent from the opinion of the gentleman from South Carolina. The right of nations, on subjects of this kind, are necessarily very much modified by circumstances. Because England or France could not rightfully complain of the transfer of Florida to us, it by no means follows, as the gentleman supposes, that we could not complain of the cession of Cuba to one of them. The plain difference is, that the transfer of Florida to us was not dangerous to the safety of either of those nations, nor fatal to any of their great and essential interests. Proximity of position, neighbourhood, whatever augments the power of injuring and annoying, very properly belong to the consideration of all cases of this kind. The greater or less facility of access itself is of consideration in such questions, because it brings, or may bring, weighty consequences with it. It justifies, for these reasons, and on these grounds, what otherwise might never be thought of. By negotiation with a foreign power, Mr. Jefferson obtained a province. Without any alteration of our Constitution, we have made it part of the United States, and its Senators and Representatives, now coming from several States, are here among us. Now, sir, if, instead of being Louisiana, this had been one of the provinces of Spain proper, or one of her South American colonies, he must have been a madman, that should have proposed such an acquisition. A high conviction of its convenience, arising from proximity, and from close natural connexion, alone reconciled the country to the measure. Considerations of the same sort have weight in other cases.

An honorable member from Kentucky, (Mr. Wickliffe,) argues, that although we might rightfully prevent another power from taking Cuba from Spain, by force, yet if Spain should choose to make the voluntary transfer, we should have no right whatever to interfere. Sir, this is a distinction without a difference. If we are likely to have contention about Cuba, let us first well consider what our rights are, and not commit ourselves. And, sir, if we have any right to interfere at all, it applies as well to the case of a peaceable, as to that of a forcible, transfer. If nations be at war, we are not judges of the question of right, in that war; we must acknowledge, in both parties, the mutual right of attack, and the mutual right of conquest. It is not for us to set bounds to their belligerant operations, so long as they do not affect ourselves. Our right to interfere, sir, in any such case, is but the exercise of the right of reasonable and necessary self-defence. It is a high and delicate exercise of that right; one not to be made but on grounds of strong and manifest reason, justice, and necessity. The real question is, whether the possession of Cuba by a great maritime power of Europe, would seriously endanger our own immediate security, or our essential interests

I put the question, sir, in the language of some of the best considered state papers of modern times. The general rule of national law, is, unquestionably, against interference, in the transactions of other States. There are, however, acknowledged exceptions, growing out of circumstances, and founded in those circumstances. These exceptions, it has been properly said, cannot, without danger, be reduced to previous rule, and incorporated into the ordinary diplomacy of nations. Nevertheless, they do exist, and must be judged of, when they arise, with a just regard to our own essential interests, but in a spirit of strict justice and delicacy also towards foreign States.

The ground of these exceptions is, as I have already stated, self-preservation. It is not a slight injury to our interest; it is not even a great inconvenience, that makes out a case. There must be danger to our security, or danger, manifest and imminent danger, to our essential rights, and our essential interests. Now, sir, let us look at Cuba. I need hardly refer to its present amount of commercial connexion with the United States. Our statistical tables, I presume, would show us, that our commerce with the Havanna alone is more in amount than our whole commercial intercourse with France and all her dependencies. But this is but one part of the case, and not the most important. Cuba, as is well said in the report of the Committee of Foreign Affairs, is placed in the mouth of the Mississippi. Its occupation by a strong maritime power would be felt, in the first moment of hostility, as far up the Mississippi and the Missouri, as our population extends. It is the commanding point of the Gulf of Mexico. See, too, how it lies in the very line of our coast-wise traffic; interposed in the very highway between New York and New Orleans.

Now, sir, who has estimated, or who can estimate, the effect of a change, which should place this Island in other hands, subject it to new rules of commercial intercourse, or connect it with objects of a different and still more dangerous nature? Sir, I repeat that I feel no disposition to pursue this topic, on the present occasion. My purpose is only to show its importance, and to beg gentlemen not to prejudice any rights of the country by assenting to propositions, which, perhaps, may be necessary to be reviewed.

And here I differ again with the gentleman from Kentucky. He thinks that, in this, as in other cases, we should wait till the event comes, without any previous declaration of our sentiments upon subjects important to our own rights or our own interests. Sir, such declarations are often the appropriate means of preventing that which, if unprevented, it might be difficult to redress. A great object in holding diplomatic intercourse, is frankly to expose the views and objects of nations, and to prevent, by candid explanation, collision and war. In this case, the government has said that we could not assent to the transfer of Cuba, to another European State. Can we so assent? Do gentlemen think we can? If not, then it was entirely proper that this intimation should be frankly and seasonably made. Candor required it; and it would have been unpardonable, it would have been injustice, as well as folly, to have been silent, while we might suppose the transaction to be contemplated, and then to complain of it afterwards. If we should have a subsequent right

to complain, we have a previous right, equally clear, of protesting, and if the evil be one, which, when it comes, would allow us to apply a remedy, it not only allows us, but it makes it our duty, also, to apply prevention.

But, sir, while some gentlemen have maintained, that on the subject of a transfer to any of the European powers, the President has said too much, others insist that on that of the Islands being occupied by Mexico or Colombia, he has said and done too little. I presume, sir, for my own part, that the strongest language has been directed to the source of greatest danger. Heretofore that danger was, doubtless, greatest, which was apprehended from a voluntary transfer. The other has been met, as it arose; and, thus far, adequately and sufficiently met. And here, sir, I cannot but say that I never knew a more extraordinary argument than we have heard on the conduct of the Executive on this part of the case. The President is charged with inconsistency; and, in order to make this out, public despatches are read, which, it is said, militate with one another.

Sir, what are the facts? This government saw fit to invite the Emperor of Russia to use his endeavours to bring Spain to treat of peace with her revolted colonies. Russia was addressed on this occasion as the friend of Spain; and, of course, every argument which it was thought might have influence, or ought to have influence, either on Russia or Spain, was suggested in the correspondence. Among other things, the probable loss to Spain, of Cuba and Porto Rico, was urged; and the question was asked, how it was, or could be, expected by Spain, that the United States could interfere, to prevent Mexico and Colombia from taking those Islands from her, since she was their enemy, in a public war, and since she pertinaciously, and unreasonably, as we think, insists on maintaining the war; and since these Islands offered an obvious object of attack? Was not this, sir, a very proper argument to be urged to Spain? A copy of this despatch, it seems, was sent to the Senate, in confidence. It has not been published by the Executive. Now, the alleged inconsistency is, that, notwithstanding this letter, the President has interfered to dissuade Mexico and Colombia from attacking Cuba; that, finding or thinking that those States meditated such a purpose, this government has urged them to desist from it. Sir, was ever anything more unreasonable than this charge? Was it not proper, that, to produce the desired result of peace, our government should address different motives to the different parties in the war? Was it not its business to set before each party its dangers and its difficulties in pursuing the war? And if, now, by anything unexpected, these respective correspondences have become public, are these different views, addressed thus to different parties, and with different objects, to be relied on as proof of inconsistency? It is the strangest accusation ever heard of. No government, not wholly destitute of common sense, would have acted otherwise. We urged the proper motives to both parties. To Spain we urged the probable loss of Cuba; we showed her the dangers of its capture by the new States; and we asked her to inform us on what ground it was, that we could interfere to prevent such capture, since

she was at war with these states, and they had an unquestionable right to attack her in any of her territories; and especially she was asked, how she could expect good offices from us, on this occasion, since she fully understood our opinion to be, that she was persisting in the war without, or beyond, all reason, and with a sort of desperation. This was the appeal made to the good sense of Spain, through Russia. But, soon afterwards, having reason to suspect that Colombia and Mexico were actually preparing to attack Cuba, and knowing that such an event would most seriously affect us, our government remonstrated against such meditated attack, and to the present time it has not been made. In all this, who sees anything either improper or inconsistent? For myself, I think the course pursued showed a watchful regard to our own interest, and is wholly free from any imputation, either of impropriety, or inconsistency.

There are other subjects, sir, in the President's message, which have been discussed in the debate, but on which I shall not detain the Committee.

It cannot be denied, that from the commencement of our government, it has been its object to improve and simplify the principles of national intercourse. It may well be thought a fit occasion to urge these improved principles, at a moment when so many new States are coming into existence, untrammeled, of course, with previous and long established connexions or habits. Some hopes of benefit, connected with these topics, are suggested in the message.

The abolition of private war on the ocean, is also among the subjects of possible consideration. This is not the first time that that subject has been mentioned. The late President took occasion to enforce the considerations which he thought recommended it. For one, I am not prepared to say how far such abolition may be practicable, or how far it ought to be pursued; but there are views belonging to the subject, which have not been, in any degree, answered or considered, in this discussion.

Sir, it is not always the party that has the power of employing the largest military marine, that enjoys the advantage by authorising privateers in war. It is not enough that there are brave and gallant captors; there must be something to be captured. Suppose, sir, a war between ourselves and any one of the new States of South America were now existing, who would lose most, by the practice of privateering, in such a war? There would be nothing for us to attack; while the means of attacking us would flow to our enemies from every part of the world. Capital, ships, and men, would be abundant in all their ports, and our commerce, spread over every sea, would be the destined prey. So, again, if war should unhappily spring up among those States themselves, might it not be for our interest, as being likely to be much connected by intercourse with all parties, that our commerce should be free from the visitation and search of private armed ships; one of the greatest vexations to neutral commerce in time of war? These, sir, are some of the considerations belonging to this subject. I have mentioned them only to show that they well deserve serious attention.

I have not intended to reply to the many observations which have been submitted to us, on the message of the President to this House,

or that to the Senate. Certainly I am of opinion, that some of those observations merited an answer, and they have been answered by others. On two points only will I make a remark. It has been said, and often repeated, that the President in his message to the Senate, has spoken of his own power in regard to missions, in terms which the Constitution does not warrant. If gentlemen will turn to the message of President Washington, relative to the mission to Lisbon, in the 10th vol. of State Papers, they will see almost the exact form of expression used in this case. The other point, on which I would make a remark, is the allegation, that an unfair use has been made in the argument of the message, of General Washington's Farewell Address. There would be no end, sir, to comments and criticisms, of this sort, if they were to be pursued. I only observe, that, as it appears to me, the argument of the message, and its use of the Farewell Address, are not fairly understood. It is not attempted to be inferred from the Farewell Address, that, according to the opinion of Washington, we ought now to have alliances with foreign States. No such thing. The Farewell Address recommends to us, to abstain as much as possible from all sorts of political connexion with the States of Europe, alleging, as the reason for this advice, that Europe has a set of primary interests of her own, separate from ours, and with which we have no natural connexion. Now the message argues, and argues truly, that the new South American States, not having a set of interests of their own growing out of the balance of power, family alliances, &c., separate from ours, in the same manner, and to the same degree, as the primary interests of Europe were represented to be; this part of the Farewell Address, aimed at those separate interests expressly, did not apply in this case. But does the message infer from this the propriety of alliances with these new States? Far from it. It infers no such thing. On the contrary, it disclaims all such purpose.

There is one other point, sir, on which common justice requires a word to be said. It has been alleged that there are material differences, as to the papers sent respectively to the two Houses. All this, as it seems to me, may be easily and satisfactorily explained. In the first place, the instructions of May, 1823, which, it is said, were not sent to the Senate, were instructions on which a treaty had been already negotiated; which treaty had been subsequently ratified by the Senate. It may be presumed, that when the treaty was sent to the Senate, the instructions accompanied it; and if so, they were actually already before the Senate; and this accounts for one of the alleged differences. In the next place, the letter to Mr. Middleton, in Russia, not sent to the House, but now published by the Senate, is such a paper as possibly the President might not think proper to make public. There is evident reason for such an inference. And, lastly, the correspondence of Mr. Brown, sent here, but not to the Senate, appears, from its date, to have been received after the communication to the Senate. Probably when sent to us, it was also sent, by another message, to that body.

These observations, sir, are tedious and uninteresting. I am glad to be through with them. And here I might terminate my remarks,

and relieve the patience, now long and heavily taxed, of the Committee. But there is one part of the discussion, on which I must ask to be indulged with a few observations.

Pains, sir, have been taken by the honorable member from Virginia, to prove that the measure now in contemplation, and, indeed, the whole policy of the government respecting South America, is the unhappy result of the influence of a gentleman formerly filling the chair of this House. To make out this, he has referred to certain speeches of that gentleman delivered here. He charges him with having become himself affected at an early day with what he is pleased to call the South American fever; and with having infused its baneful influence into the whole councils of the country.

If, sir, it be true, that that gentleman, prompted by an ardent love of civil liberty, felt earlier than others, a proper sympathy for the struggling colonies of South America; or that, acting on the maxim, that revolutions do not go backward, he had the sagacity to foresee, earlier than others, the successful termination of those struggles; if, thus feeling, and thus perceiving, it fell to him to lead the willing or unwilling councils of his country, in her manifestations of kindness to the new governments, and in her seasonable recognition of their independence; if it be this which the honorable member imputes to him; if it be by this course of public conduct that he has identified his name with the cause of South American liberty, he ought to be esteemed one of the most fortunate men of the age. If all this be, as is now represented, he has acquired fame enough. It is enough for any man, thus to have connected himself with the greatest events of the age in which he lives, and to have been foremost in measures which reflect high honor on his country, in the judgment of mankind. Sir, it is always with great reluctance that I am drawn to speak, in my place here, of individuals; but I could not forbear what I have now said, when I hear, in the House of Representatives, and in this land of free spirits, that it is made matter of imputation and of reproach, to have been first to reach forth the hand of welcome and of succour to new-born nations, struggling to obtain, and to enjoy, the blessings of liberty.

We are told that the country is deluded and deceived by cabalistic words. Cabalistic words! If we express an emotion of pleasure at the results of this great action of the spirit of political liberty; if we rejoice at the birth of new Republican nations, and express our joy by the common terms of regard and sympathy; if we feel and signify high gratification that, throughout this whole continent, men are now likely to be blessed by free and popular institutions; and if, in the uttering of these sentiments, we happen to speak of sister Republics; of the great American family of nations; or of the political system and forms of government of this hemisphere, then indeed, it seems, we deal in senseless jargon, or impose on the judgment and feeling of the community by cabalistic words! Sir, what is meant by this? Is it intended that the People of the United States ought to be totally indifferent to the fortunes of these new neighbours? Is no change, in the lights in which we are to view them, to be wrought, by their having thrown off foreign dominion, establish-

ed independence, and instituted, on our very borders, republican governments, essentially after our own example?

Sir, I do not wish to overrate, I do not overrate, the progress of these new States in the great work of establishing a well-secured popular liberty. I know that to be a great attainment, and I know they are but pupils in the school. But, thank God, they are in the school. They are called to meet difficulties, such as neither we nor our fathers encountered. For these, we ought to make large allowances. What have we ever known like the colonial vassalage of these States? When did we or our ancestors, feel, like them, the weight of a political despotism that presses men to the earth, or of that religious intolerance which would shut up heaven to all but the bigoted? Sir, we sprung from another stock. We belong to another race. We have known nothing—we have felt nothing of the political despotism of Spain, nor of the heat of her fires of intolerance. No rational man expects that the South can run the same rapid career as the North; or that an insurgent province of Spain is in the same condition as the English colonies, when they first asserted their independence. There is, doubtless, much more to be done, in the first than in the last case. But on that account the honor of the attempt is not less; and if all difficulties shall be in time surmounted, it will be greater. The work may be more arduous—it is not less noble, because there may be more of ignorance to enlighten; more of bigotry to subdue; more of prejudice to eradicate. If it be a weakness to feel a strong interest in the success of these great revolutions, I confess myself guilty of that weakness. If it be weak *to feel that I am* an American, to think that recent events have not only opened new modes of intercourse, but have created also new grounds of regard and sympathy between ourselves and our neighbours; if it be weak to feel that the South, in her present state, is somewhat more emphatically a part of America, than when she lay obscure, oppressed, and unknown, under the grinding bondage of a foreign power; if it be weak to rejoice, when, even in any corner of the earth, human beings are able to get up from beneath oppression, to erect themselves, and to enjoy the proper happiness of their intelligent nature; if this be weak, it is a weakness from which I claim no exemption.

A day of solemn retribution now visits the once proud monarchy of Spain. The prediction is fulfilled. The spirit of Montezuma and of the Incas might now well say,

> "Art thou, too, fallen, Iberia? Do we see
> The robber and the murderer weak as we?
> Thou! that has wasted earth and dared despise
> Alike the wrath and mercy of the skies,
> Thy pomp is in the grave; thy glory laid
> Low in the pit thine avarice has made."

Mr. Chairman: I will detain you only with one more reflection on this subject. We cannot be so blind—we cannot so shut up our senses, and smother our faculties, as not to see, that in the progress and the establishment of South American liberty, our own example has been among the most stimulating causes. In their emergen-

cies, they have looked to our experience; in their political institutions, they have followed our models; in their deliberations, they have invoked the presiding spirit of our own liberty. They have looked steadily, in every adversity, to the GREAT NORTHERN LIGHT. In the hour of bloody conflict, they have remembered the fields which have been consecrated by the blood of our own fathers; and when they have fallen, they have wished only to be remembered, with them, as men who had acted their parts bravely, for the cause of liberty in the Western World.

Sir, I have done. If it be weakness to feel the sympathy of one's nature excited for such men, in such a cause, I am guilty of that weakness. If it be prudence to meet their proffered civility, not with reciprocal kindness, but with coldness or with insult, I choose still to follow where natural impulse leads, and to give up that false and mistaken prudence, for the voluntary sentiments of my heart.

SPEECH

IN THE SENATE OF THE UNITED STATES, ON THE BILL FOR THE RELIEF OF THE SURVIVING OFFICERS OF THE REVOLUTION. APRIL 25, 1828.

It has not been my purpose to take any part in the discussion of this bill. My opinions in regard to its general object, I hope are well known; and I had intended to content myself with a steady and persevering vote in its favor. But, when the moment of final decision has come, and the division is so likely to be nearly equal, I feel it to be a duty to put not only my own vote, but my own earnest wishes, also, and my fervent entreaties to others, into the doubtful scale.

It must be admitted, sir, that the persons for whose benefit this bill is designed, are, in some respects, peculiarly unfortunate. They are compelled to meet not only objections to the principle, but, whichever way they turn themselves, embarrassing objections also to details. One friend hesitates at this provision, and another at that; while those who are not friends at all, of course oppose everything, and propose nothing. When it was contemplated, heretofore, to give the petitioners an outright sum, in satisfaction of their claim, then the argument was, among other things, that the treasury could not bear so heavy a draught on its means, at the present moment.

The plan is accordingly changed: an annuity is proposed; and then the objection changes also; and it is now said, that this is but granting pensions, and that the pension system has already been carried too far. I confess, sir, I felt wounded—deeply hurt—at the observations of the gentleman from Georgia. "So then," said he, "these modest and high-minded gentlemen take a pension at last!" How is it possible, that a gentleman of his generosity of character, and general kindness of feeling, can indulge in such a tone of triumphant irony towards a few old, gray headed, poor, and broken warriors of the revolution! There is, I know, something repulsive and opprobrious in the name of pension. But, God forbid that I should taunt them with it! With grief, heart-full grief, do I behold the necessity which leads these veterans to accept the bounty of their country, in a manner not the most agreeable to their feelings. Worn out and decrepit, represented before us by those, their former brothers in arms, who totter along our lobbies, or stand leaning on their crutches. I, for one, would most gladly support such a measure as should con-

sult at once their services, their years, their necessities, and the delicacy of their sentiments. I would gladly give, with promptitude and grace, with gratitude and delicacy, that which merit has earned, and necessity demands.

Sir, what are the objections urged against this bill? Let us look at them, and see if they be real; let us weigh them, to know if they be solid. For, sir, we are not acting on a slight matter. Nor is what we do likely to pass unobserved now, or to be forgotten hereafter. I regard the occasion as one full of interest and full of responsibility. Those individuals, the little remnant of a gallant band, whose days of youth and manhood were spent for their country in the toils and dangers of the field, are now before us, poor and old,—intimating their wants with reluctant delicacy, and asking succour from their country with decorous solicitude. How we shall treat them, it behooves us well to consider, not only for their sake, but for our own sake, also, and for the sake of the honor of the country. Whatever we do, will not be done in a corner. Our constituents will see it; the people will see it; the world will see it.

Let us candidly examine, then, the objections which have been raised to this bill; with a disposition to yield to them, if from necessity we must; but, to overcome them, if in fairness we can.

In the first place, it is said, that we ought not to pass the bill, because it will involve us in a charge of unknown extent. We are reminded, that when the general pension law for revolutionary soldiers passed, an expense was incurred far beyond what had been contemplated; that the estimate, of the number of surviving revolutionary soldiers, proved altogether fallacious; and that, for aught we know, the same mistake may be committed now.

Is this objection well-founded? Let me say, in the first place, that if one measure, right in itself, has gone farther than it was intended to be carried, for want of accurate provisions, and adequate guards, this may furnish a very good reason for supplying such guards and provisions in another measure, but can afford no ground at all for rejecting such other measure, altogether, if it be in itself just and necessary. We should avail ourselves of our experience, it seems to me, to correct what has been found amiss; and not draw from it an undistinguishing resolution to do nothing, merely because it has taught us, that, in something we have already done, we have acted with too little care. In the next place, does the fact bear out this objection? Is there any difficulty in ascertaining the number of the officers who will be benefited by this bill, and in estimating the expense, therefore, which it will create? I think there is none. The records in the department of war, and the treasury, furnish such evidence as that there is no danger of material mistake. The diligence of the chairman of the committee has enabled him to lay the facts, connected with this part of the case, so fully and minutely before the Senate, that I think no one can feel serious doubt. Indeed, it is admitted by the adversaries of the bill, that this objection does not apply here with the same force as in the former pension-law. It is admitted that there is a greater facility in this case than in that, in ascertaining the number and names of those who will be entitled to receive that bounty.

This objection, then, is not founded in true principle; and if it were, it is not sustained by the facts. I think we ought not to yield to it, unless, (which I know is not the sentiment which pervades the Senate,) feeling that the measure ought not to pass, we still prefer not to place our opposition to it on a distinct and visible ground, but to veil it under vague and general objections.

In the second place, it has been objected, that the operation of the bill will be unequal, because all officers of the same rank will receive equal benefit from it, although they entered the army at different times, and were of different ages. Sir, is not this that sort of inequality which must always exist in every general provision? Is it possible that any law can descend into such particulars? Would there be any reason why it should do so, if it could? The bill is intended for those, who, being in the Army in October, 1780, then received a solemn promise of half-pay for life, on condition that they would continue to serve through the war. Their ground of merit, is, that whensoever they had joined the army, being thus solicited by their country to remain in it, they at once went for the whole; they fastened their fortunes to the standards which they bore, and resolved to continue their military service till it should terminate either in their country's success or in their own deaths. This is their merit and their ground of claim. How long they had been already in service, is immaterial and unimportant. They were then in service; the salvation of their country depended on their continuing in that service. Congress saw this imperative necessity, and earnestly solicited them to remain, and promised the compensation. They saw the necessity, also, and they yielded to it.

But, again, it is said that the present time is not auspicious. The bill, it is urged, should not pass now. The venerable member from North Carolina says, as I understood him, that he would be almost as willing that the bill should pass at some other session, as be discussed at this. He speaks of the distresses of the country at the present moment, and of another bill, now in the Senate, having, as he thinks, the effect of laying new taxes upon the people. He is for postponement. But it appears to me, with entire respect for the honourable member, that this is one of the cases least of all fit for postponement. It is not a measure, that, if omitted this year, may as well be done next. Before next year comes, those who need the relief may be beyond its reach. To postpone for another year, an annuity to persons already so aged; an annuity, founded on the merit of services which were rendered half a century ago; to postpone, for another whole year, a bill for the relief of deserving men,—proposing not aggrandizement but support; not emolument but bread; is a mode of disposing of it, in which I cannot concur.

But it is argued, in the next place, that the bill ought not to pass because those who have spoken in its favor have placed it on different grounds. They have not agreed, it is said, whether it is to be regarded as a matter of right, or matter of gratuity, or bounty. Is there weight in this objection? If some think the grant ought to be made, as an exercise of judicious and well deserved bounty, does it weaken that ground that others think it founded in strict right, and that we cannot refuse it without manifest and palpable injustice?

Or, is it strange, that those who feel the legal justice of the claim, should address to those who do not feel it, considerations of a different character, but fit to have weight, and which they hope may have weight? Nothing is more plain and natural than the course which this application has taken. The applicants, themselves, have placed it on the ground of equity and law. They advert to the resolve of 1780, to the commutation of 1783, and to the mode of funding the certificates. They stand on their contract. This is perfectly natural. On that basis, they can wield the argument themselves. Of what is required by justice and equity, they may reason even in their own case. But when the application is placed on different grounds; when personal merit is to be urged, as the foundation of a just and economical bounty; when services are to be mentioned; privations recounted; pains enumerated; and wounds and scars counted; the discussion necessarily devolves to other hands. In all that we have seen from these officers in the various papers presented by them, it cannot but be obvious to every one, how little is said of personal merit, and how exclusively they confine themselves to what they think their rights under the contract.

I must confess, sir, that principles of equity, which appear to me as plain as the sun, are urged by the memorialists themselves with great caution, and much qualification. They advance their claim of right, without extravagance or overstraining; and they submit to it the unimpassioned sense of justice of the Senate.

For myself, I am free to say, that if it were a case between individual and individual, I think the officers would be entitled to relief in a court of equity. I may be mistaken, but such is my opinion. My reasons are, that I do not think they had a fair option, in regard to the commutation of half-pay. I do not think it was fairly in their power to accept or reject that offer. The condition they were in, and the situation of the country, compelled them to submit to whatever was proposed. In the next place it seems to me too evident to be denied, that the five years' full pay was never really and fully made to them. A formal compliance with the terms of the contract, not a real compliance, is at most all that was ever done. For these reasons, I think, in an individual case, law and equity would reform the settlement. The conscience of chancery would deal with this case as with other cases of hard bargains; of advantages obtained by means of inequality of situation; of acknowledged debts, compounded from necessity, or compromised without satisfaction. But, although such would be my views of this claim, as between man and man, I do not place my vote for this bill on that ground. I see the consequence of admitting the claim, on the foundation of strict right. I see at once, that, on that ground, the heirs of the dead would claim, as well as the living; and that other public creditors, as well as these holders of commutation certificates, would also have whereof to complain. I know it is altogether impossible to open the accounts of the revolution, and to think of doing justice to everybody. Much of suffering there necessarily was, that can never be paid for; much of loss that can never be repaired. I do not, therefore, for myself, rest my vote on grounds leading to any such consequences. I feel constrained to say, that we cannot do, and

ought not to think of doing, everything in regard to revolutionary debts, which might be strictly right, if the whole settlement were now to be gone over anew. The honorable member from New York [Mr. Van Buren,] has stated, what I think the true ground of the bill. I regard it as an act of discreet and careful bounty, drawn forth by meritorious services, and by personal necessities. I cannot argue, in this case, with the technicality of my profession; and because I do not feel able to allow the claim on the ground of mere right, I am not willing, for that reason, to nonsuit the petitioners, as not having made out their case. Suppose we admit, as I do, that on the ground of mere right, it would not be safe to allow it; or, suppose that to be admitted for which others contend, that there is in the case no strict right upon which, under any circumstances, the claim could stand; still, it does not follow that there is no reasonable and proper foundation for it, or that it ought not to be granted. If it be not founded on strict right, it is not to be regarded as being, for that reason alone, an undeserved gratuity, or the effusion of mere good will. If that which is granted be not always granted on the ground of absolute right, it does not follow that it is granted from merely an arbitrary preference, or capricious beneficence. In most cases of this sort, mixed considerations prevail, and ought to prevail Some consideration is due to the claim of right; much to that of merit and service; and more to that of personal necessity. If I knew that all the persons to be benefited by this bill were in circumstances of comfort and competency, I should not support it. But this I know to be otherwise. I cannot dwell with propriety, or delicacy, on this part of the case; but I feel its force, and I yield to it. A single instance of affluence, or a few cases where want does not tread close on those who are themselves treading close on the borders of the grave, does not affect the general propriety and necessity of the measure. I would not draw this reason for the bill into too much prominence. We all know it exists; and we may, I think, safely act upon it, without so discussing it as to wound, in old, but sensitive, and still throbbing bosoms, feelings which education inspired, the habits of military life cherished, and a just self-respect is still desirous to entertain. I confess I meet this claim, not only with a desire to do something in favor of these officers, but to do it in a manner indicative not only of decorum but of deep respect,—that respect which years, age, public service, patriotism, and broken fortune, command to spring up in every manly breast.

It is, then, sir, a mixed claim, of faith and public gratitude; of justice and honorable bounty; of merit and benevolence. It stands on the same foundation as that grant, which no one regrets, of which all are proud, made to the illustrious foreigner, who showed himself so early, and has proved himself so constantly, and zealously, a friend to our country.

But then, again, it is objected, that the militia have a claim upon us; that they fought at the side of the regular soldiers, and ought to share in the country's remembrance. It is known to be impossible, to carry the measure to such an extent as to embrace the militia; and it is plain, too, that the cases are different. The bill, as I have

already said, confines itself to those who served not occasionally, not temporarily, but permanently; who allowed themselves to be counted on as men who were to see the contest through, last as long as it might; and who have made the phrase, of "'listing during the war," a proverbial expression, signifying unalterable devotion to our cause, through good fortune and ill fortune, till it reaches its close. This is a plain distinction; and although, perhaps, I might wish to do more, I see good ground to stop here, for the present, if we must stop anywhere. The militia who fought at Concord, at Lexington, and at Bunker's Hill, have been alluded to, in the course of this debate, in terms of well-deserved praise. Be assured, sir, there could with difficulty be found a man, who drew his sword, or carried his musket, at Concord, at Lexington, or Bunker's Hill, who would wish you to reject this bill. They might ask you to do more; but never to refrain from doing this. Would to God they were assembled here, and had the fate of the bill in their own hands! Would to God, the question of its passage was to be put to them! They would affirm it, with a unity of acclamation that would rend the roof of the capitol.

I support the measure, then, Mr. President, because I think it a proper and judicious exercise of well-merited national bounty. I think, too, the general sentiment of my own constituents, and of the country, is in favor of it. I believe the member from North Carolina, himself, admitted, that an increasing desire, that something should be done for the revolutionary officers, manifested itself in the community. The bill will make no immediate or great draught on the treasury. It will not derange the finances. If I had supposed that the state of the treasury would have been urged against the passage of this bill, I should not have voted for the Delaware breakwater, because that might have been commenced next year; nor for the whole of the sums which have been granted for fortifications; for their advancement, with a little more or little less of rapidity, is not of the first necessity. But the present case is urgent. What we do, should be done quickly.

Mr. President, allow me to repeat, that neither the subject, nor the occasion, is an ordinary one. Our own fellow citizens do not so consider it; the world will not so regard it. A few deserving soldiers are before us, who served their country faithfully through a seven years' war. That war was a civil war. It was commenced on principle, and sustained by every sacrifice, on the great ground of civil liberty. They fought bravely, and bled freely. The cause succeeded, and the country triumphed. But the condition of things did not allow that country, sensible as it was to their services and merits, to do them the full justice which it desired. It could not entirely fulfil its engagements. The army was to be disbanded; but it was unpaid. It was to lay down its own power; but there was no government with adequate power to perform what had been promised to it. In this critical moment, what is its conduct? Does it disgrace its high character? Is temptation able to seduce it? Does it speak of righting itself? Does it undertake to redress its own wrongs, by its own sword? Does it lose its patriotism in its deep

sense of injury and injustice? Does military ambition cause its integrity to swerve? Far, far otherwise.

It had faithfully served and saved the country; and to that country it now referred, with unhesitating confidence, its claim and its complaints. It laid down its arms with alacrity; it mingled itself with the mass of the community; and it waited till, in better times, and under a new government, its services might be rewarded, and the promises made to it fulfilled. Sir, this example is worth more, far more, to the cause of civil liberty, than this bill will cost us. We can hardly recur to it too often, or dwell on it too much, for the honor of our country, and of its defenders. Allow me to say again, that meritorious service in civil war is worthy of peculiar consideration; not only because there is, in such war, usually less power to restrain irregularities, but because, also, they expose all prominent actors in them, to different kinds of danger. It is rebellion, as well as war. Those who engage in it must look not only to the dangers of the field, but to confiscation also, and attainder, and ignominious death. With no efficient and settled government, either to sustain or to control them, and with every sort of danger before them, it is great merit to have conducted with fidelity to the country, under every discouragement on the one hand, and with unconquerable bravery towards the common enemy on the other. So, sir, the officers and soldiers of the revolutionary army did conduct.

I would not, and do not underrate the services or the sufferings of others. I know well, that in the revolutionary contest, all made sacrifices, and all endured sufferings; as well those who paid for service, as those who performed it. I know, that, in the records of all the little municipalities of New England, abundant proof exists, of the zeal with which the cause was espoused, and the sacrifices with which it was cheerfully maintained. I have often there read, with absolute astonishment, the taxes, the contributions, the heavy subscriptions, often provided for by disposing of the absolute necessaries of life; by which enlistments were procured, and food and clothing furnished. It would be, sir, to these same municipalities, to these same little patriotic councils of revolutionary times, that I should now look, with most assured confidence, for a hearty support of what this bill proposes. There, the scale of revolutionary merit stands high. There are still those living, who speak of the 19th of April, and the 17th of June, without thinking it necessary to add the year. These men, one and all, would rejoice to find that those who stood by the country bravely, through the doubtful and perilous struggle which conducted it to independence and glory, had not been forgotten in the decline and close of life.

The objects, then, sir, of the proposed bounty, are most worthy and deserving objects. The services which they rendered, were in the highest degree useful and important. The country to which they rendered them, is great and prosperous. They have lived to see it glorious; let them not live to see it unkind. For me, I can give them but my vote, and my prayers; and I give them both with my whole heart.

SPEECHES

IN THE SENATE OF THE UNITED STATES, ON THE RESOLUTION OF MR. FOOTE RESPECTING THE SALE, &c. OF PUBLIC LANDS. JAN. 1830.

The resolution was introduced on the 29th of December, 1829, as follows:—

"*Resolved*, That the Committee on Public Lands be instructed to inquire and report the quantity of public lands remaining unsold within each State and Territory. And whether it be expedient to limit, for a certain period, the sales of the public lands to such lands only as have heretofore been offered for sale, and are now subject to entry at the minimum price. And, also, whether the office of Surveyor General, and some of the land offices, may not be abolished without detriment to the public interest; or whether it be expedient to adopt measures to hasten the sales and extend more rapidly the surveys of the public lands."

On the 18th of January, Mr. Benton of Missouri addressed the Senate; and on the 19th, Mr. Hayne, of South Carolina, proceeded in the debate, and spoke at considerable length. After he had concluded Mr. Webster rose to reply, but gave way, on motion of Mr. Benton for an adjournment.

On the 20th, Mr. Webster took the floor, and spoke as follows:

NOTHING has been farther from my intention than to take any part in the discussion of this resolution. It proposes only an inquiry on a subject of much importance, and one in regard to which it might strike the mind of the mover, and of other gentlemen, that inquiry and investigation would be useful. Although I am one of those who do not perceive any particular utility in instituting the inquiry, I have, nevertheless, not seen that harm would be likely to result from adopting the resolution. Indeed, it gives no new powers and hardly imposes any new duty, on the committee. All that the resolution proposes should be done, the committee is quite competent, without the resolution, to do by virtue of its ordinary powers. But, sir, although I have felt quite indifferent about the passing of the resolution, yet opinions were expressed yesterday on the general subject of the public lands, and on some other subjects, by the gentleman from South Carolina, so widely different from my own, that I am not willing to let the occasion pass without some reply. If I deemed the resolution as originally proposed hardly necessary, still less do I think it either necessary or expedient to adopt it, since a second branch has been added to it to day. By this second branch, the committee is to be instructed to inquire whether it be expedient to adopt measures to hasten the sales, and extend more rapidly the surveys of the public lands.

Now it appears, that, in forty years, Mr. President, we have sold no more than about twenty millions of acres of public lands. The annual sales do not now exceed, and never have exceeded, one million of acres. A million a year is, according to our experience, as much as the increase of population can bring into settlement. And it appears, also, that we have, at this moment, sir, surveyed and in the market, ready for sale, two hundred and ten millions of acres, or thereabouts. All this vast mass, at this moment, lies on our hands, for mere want of purchasers. Can any man, looking to the real interests of the country and the people, seriously think of inquiring whether we ought not still faster to hasten the public surveys, and to bring, still more and more rapidly, other vast quantities into the market? The truth is, that rapidly as population has increased, the surveys have, nevertheless, outran our wants. There are more lands than purchasers. They are now sold at low prices, and taken up as fast as the increase of people furnishes hands to take them up.—It is obvious, that no artificial regulation, no forcing of sales, no giving away of the lands even, can produce any great and sudden augmentation of population. The ratio of increase, though great, has yet its bounds. Hands for labor are multiplied only at a certain rate. The lands cannot be settled but by settlers; nor faster than settlers can be found. A system, if now adopted, of forcing sales, at whatever prices, may have the effect of throwing large quantities into the hands of individuals, who would, in this way, in time, become themselves competitors with the government, in the sale of land. My own opinion has uniformly been, that the public lands should be offered freely, and at low prices; so as to encourage settlement and cultivation as rapidly as the increasing population of the country is competent to extend settlement and cultivation.

Every actual settler should be able to buy good land, at a cheap rate; but on the other hand, speculation by individuals, on a large scale, should not be encouraged, nor should the value of all lands, sold and unsold, be reduced to nothing, by throwing new and vast quantities into the market at prices merely nominal.

I now proceed, sir, to some of the opinions expressed by the gentleman from South Carolina. Two or three topics were touched by him, in regard to which he expressed sentiments in which I do not at all concur.

In the first place, sir, the honorable gentleman spoke of the whole course and policy of the government, towards those who have purchased and settled the public lands; and seemed to think this policy wrong. He held it to have been, from the first, hard and rigorous; he was of opinion, that the United States had acted towards those who had subdued the western wilderness, in the spirit of a stepmother; that the public domain had been improperly regarded as a source of revenue; and that we had rigidly compelled payment for that which ought to have been given away. He said we ought to have followed the analogy of other governments, which had acted on a much more liberal system than ours, in planting colonies. He dwelt, particularly, upon the settlement of America by colonies from Europe; and reminded us, that their governments had not exacted from those colonists payment for the soil; with them, he said,

it had been thought, that the conquest of the wilderness was, itself, an equivalent for the soil, and he lamented that we had not followed that example, and pursued the same liberal course towards our own emigrants to the West.

Now, sir, I deny, altogether, that there has been anything harsh or severe, in the policy of the government towards the new states of the West. On the contrary, I maintain, that it has uniformly pursued, towards those states, a liberal and enlightened system, such as its own duty allowed and required; and such as their interest and welfare demanded. The government has been no stepmother to the new states. She has not been careless of their interests, nor deaf to their requests; but from the first moment, when the territories which now form those states were ceded to the union, down to the time in which I am now speaking, it has been the invariable object of the government, to dispose of the soil, according to the true spirit of the obligation under which it received it; to hasten its settlement and cultivation, as far and as fast as practicable; and to rear the new communities into equal and independent states, at the earliest moment of their being able, by their numbers, to form a regular government.

I do not admit, sir, that the analogy to which the gentleman refers us, is just, or that the cases are at all similar. There is no resemblance between the cases upon which a statesman can found an argument. The original North American colonists either fled from Europe, like our New England ancestors, to avoid persecution, or came hither at their own charges, and often at the ruin of their fortunes, as private adventurers. Generally speaking, they derived neither succour nor protection from their governments at home. Wide, indeed, is the difference between those cases and ours. From the very origin of the government, these western lands, and the just protection of those who had settled or should settle on them, have been the leading objects in our policy, and have led to expenditures, both of blood and treasure, not inconsiderable: not indeed exceeding the importance of the object, and not yielded grudgingly or reluctantly, certainly; but yet not inconsiderable, though necessary sacrifices, made for high proper ends. The Indian title has been extinguished at the expense of many millions. Is that nothing ? There is still a much more material consideration. These colonists, if we are to call them so, in passing the Alleghany, did not pass beyond the care and protection of their own government. Wherever they went, the public arm was still stretched over them. A parental government at home was still ever mindful of their condition, and their wants, and nothing was spared, which a just sense of their necessities required. Is it forgotten, that it was one of the most arduous duties of the government, in its earliest years, to defend the frontiers against the northwestern Indians ? Are the sufferings and misfortunes under Harmar and St. Clair, not worthy to be remembered? Do the occurrences connected with these military efforts show an unfeeling neglect of western interests? And here, sir, what becomes of the gentleman's analogy? What English armies accompanied our ancestors to clear the forests of a barbarous foe? What treasures of the Exchequer were expended

in buying up the original title to the soil? What governmental arm held its ægis over our fathers' heads, as they pioneered their way in the wilderness? Sir, it was not till General Wayne's victory, in 1794, that it could be said, we had conquered the savages. It was not till that period, that the government could have considered itself as having established an entire ability to protect those who should undertake the conquest of the wilderness. And here, sir, at the epoch of 1794, let us pause, and survey the scene. It is now thirty-five years since that scene actually existed. Let us, sir, look back, and behold it. Over all that is now Ohio, there then stretched one vast wilderness, unbroken, except by two small spots of civilized culture, the one at Marietta, and the other at Cincinnati. At these little openings, hardly each a pin's point upon the map, the arm of the frontierman had levelled the forest, and let in the sun. These little patches of earth, and themselves almost overshadowed by the overhanging boughs of that wilderness, which had stood and perpetuated itself, from century to century, ever since the creation, were all that had then been rendered verdant by the hand of man. In an extent of hundreds, and thousands of square miles, no other surface of smiling green attested the presence of civilisation. The hunter's path crossed mighty rivers, flowing in solitary grandeur, whose sources lay in remote and unknown regions of the wilderness. It struck, upon the north, on a vast inland sea, over which the wintry tempests raged as on the ocean; all around was bare creation. It was fresh, untouched, unbounded, magnificent wilderness. And, sir, what is it now? Is it imagination only, or can it possibly be fact, that presents such a change, as surprises and astonishes us, when we turn our eyes to what Ohio now is? Is it reality, or a dream, that in so short a period even as thirty-five years, there has sprung up, on the same surface, an independent state, with a million of people? A million of inhabitants! an amount of population greater than that of all the cantons of Switzerland; equal to one third of all the people of the United States, when they undertook to accomplish their independence. This new member of the republic has already left far behind her, a majority of the old states. She is now by the side of Virginia and Pennsylvania; and, in point of numbers, will shortly admit no equal but New York herself. If, sir, we may judge of measures by their results, what lessons do these facts read us, upon the policy of the government? What inferences do they authorise, upon the general question of kindness, or unkindness? What convictions do they enforce, as to the wisdom and ability, on the one hand, or the folly and incapacity, on the other, of our general administration of western affairs? Sir, does it not require some portion of self-respect in us, to imagine, that if our light had shone on the path of government, if our wisdom could have been consulted in its measures, a more rapid advance to strength and prosperity would have been experienced? For my own part, while I am struck with wonder at the success, I also look with admiration at the wisdom and foresight which originally arranged and prescribed the system for the settlement of the public domain. Its operation has been, without a moment's interruption, to push the settlement of the western country to the full extent of our utmost means.

But, sir, to return to the remarks of the honorable member from South Carolina. He says that Congress has sold these lands, and put the money into the treasury, while other governments, acting in a more liberal spirit, gave away their lands; and that we ought, also, to have given ours away. I shall not stop to state an account between our revenues derived from land, and our expenditures in Indian treaties and Indian wars. But, I must refer the honorable gentleman to the origin of our own title to the soil of these territories, and remind him that we received them on conditions, and under trusts, which would have been violated by giving the soil away. For compliance with those conditions, and the just execution of those trusts, the public faith was solemnly pledged. The public lands of the United States have been derived from four principal sources. First, cessions made to the United States by individual states, on the recommendation or request of the old Congress. Second. The compact with Georgia, in 1802. Third. The purchase of Louisiana in 1803. Fourth. The purchase of Florida, in 1819 Of the first class, the most important was the cession by Virginia, of all her right and title, as well of soil as jurisdiction, to all the territory within the limits of her charter, lying to the northwest of the river Ohio. It may not be ill timed to recur to the causes and occasions of this and the other similar grants.

When the war of the revolution broke out, a great difference existed in different states, in the proportion between people and territory. The northern and eastern states, with very small surfaces, contained comparatively a thick population, and there was generally within their limits, no great quantity of waste lands belonging to the government, or the crown of England. On the contrary, there were in the southern states, in Virginia and in Georgia for example, extensive public domains, wholly unsettled, and belonging to the crown. As these possessions would necessarily fall from the crown, in the event of a prosperous issue of the war, it was insisted that they ought to devolve on the United States, for the good of the whole. The war, it was argued, was undertaken and carried on at the common expense of all the colonies; its benefits, if successful, ought also to be common; and the property of the common enemy, when vanquished, ought to be regarded as the general acquisition of all. While yet the war was raging, it was contended that Congress ought to have the power to dispose of vacant and unpatented lands, commonly called crown lands, for defraying the expenses of the war, and for other public and general purposes. "Reason and Justice," said the Assembly of New Jersey, in 1778, "must decide, that the property which existed in the crown of Great Britain, previous to the present revolution, ought now to belong to the Congress, in trust for the use and benefit of the United States. They have fought and bled for it, in proportion to their respective abilities, and therefore the reward ought not to be predilectionally distributed. Shall such states as are shut out, by situation, from availing themselves of the least advantage from this quarter, be left to sink under an enormous debt, whilst others are enabled, in a short period, to replace all their expenditures from the hard earnings of the whole confederacy?"

Moved by these considerations, and these addresses made it, Congress took up the subject, and in September, 1780, recommended to the several states in the union, having claims to western territory, to make liberal cessions of a portion thereof to the United States; and on the 10th of October, 1780, Congress resolved, that any lands, so ceded in pursuance of their preceding recommendation, should be disposed of for the common benefit of the United States; should be settled and formed into distinct republican states, to become members of the Federal union, with the same rights of sovereignty, freedom and independence as the other states; and that the lands should be granted, or settled, at such times, and under such regulations, as should be agreed on by Congress. Again in September 1783, Congress passed another resolution, expressing the conditions on which cessions from states should be received; and in October following, Virginia made her cession, reciting the resolution, or act, of September preceding, and then transferring her title to her northwestern territory to the United States, upon the express condition, that the lands, so ceded, should be considered as a common fund for the use and benefit of such of the United States as had become or should become members of the confederation, Virginia inclusive, and should be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatever. The grants from other states were on similar conditions. Massachusetts and Connecticut both had claims to western lands, and both relinquished them to the United States in the same manner. These grants were all made on three substantial conditions or trusts. First, that the ceded territories should be formed into states, and admitted in due time into the union, with all the rights belonging to other states. Second, that the lands should form a common fund to be disposed of for the general benefit of all the states. Third, that they should be sold and settled, at such time and in such manner as Congress should direct.

Now, sir, it is plain that Congress never has been, and is not now, at liberty to disregard these solemn conditions. For the fulfilment of all these trusts, the public faith was, and is, fully pledged. How, then, would it have been possible for Congress, if it had been so disposed, to give away these public lands? How could they have followed the example of other governments, if there had been such, and considered the conquest of the wilderness an equivalent compensation for the soil?—The states had looked to this territory, perhaps too sanguinely, as a fund out of which means were to come to defray the expenses of the war. It had been received as a fund, as a fund Congress had bound itself to apply it. To have given it away, would have defeated all the objects which Congress, and particular states, had had in view, in asking and obtaining the cession, and would have plainly violated the conditions, which the ceding states attached to their own grants.

The gentleman admits, that the lands cannot be given away until the national debt is paid; because, to a part of that debt they stand pledged. But this is not the original pledge. There is, so to speak, an earlier mortgage. Before the debt was funded, at the moment of the cession of the lands, and by the very terms of that cession, every

state in the union obtained an interest in them, as in a common fund. Congress has uniformly adhered to this condition. It has proceeded to sell the lands, and to realize as much from them, as was compatible with the other trusts created by the same deeds of cession. One of these deeds of trust, as I have already said, was, that the lands should be sold and settled, at such time or manner as Congress shall direct. The government has always felt itself bound, in regard to sale and settlement, to exercise its own best judgment, and not to transfer the discretion to others. It has not felt itself at liberty to dispose of the soil, therefore, in large masses, to individuals, thus leaving to them the time and manner of settlement. It had stipulated to use its own judgment. If, for instance, in order to rid itself of the trouble of forming a system for the sale of those lands, and going into detail, it had sold the whole of what is now Ohio, in one mass, to individuals, or companies, it would clearly have departed from its just obligations. And who can now tell, or conjecture, how great would have been the evil of such a course? Who can say, what mischiefs would have ensued, if Congress had thrown these territories into the hands of private speculation? Or who, on the other hand, can now foresee, what the event would be, should the government depart from the same wise course hereafter; and, not content with such constant absorption of the public lands as the natural growth of our population may accomplish, should force great portions of them, at nominal or very low prices, into private hands, to be sold and settled, as and when such holders might think would be most for their own interests? Hitherto, sir, I maintain, Congress has acted wisely, and done its duty on this subject. I hope it will continue to do it.—Departing from the original idea, so soon as it was found practicable and convenient, of selling by townships, Congress has disposed of the soil in smaller and still smaller portions, till, at length, it sells in parcels of no more than eighty acres; thus putting it into the power of every man in the country, however poor, but who has health and strength, to become a freeholder if he desires, not of barren acres, but of rich and fertile soil. The government has performed all the conditions of the grant.—While it has regarded the public lands as a common fund, and has sought to make what reasonably could be made of them, as a source of revenue, it has also applied its best wisdom to sell and settle them, as fast and as happily as possible; and whensoever numbers would warrant it, each territory has been successively admitted into the union, with all the rights of an independent state.

Is there then, sir, I ask, any well founded charge of hard dealing; any just accusation for negligence, indifference, or parsimony, which is capable of being sustained against the government of the country, in its conduct, towards the new states? Sir, I think there is not.

But there was another observation of the honorable member, which, I confess, did not a little surprise me. As a reason for wishing to get rid of the public lands as soon as we could, and as we might, the honorable gentleman said, he wanted no permanent sources of income. He wished to see the time when the government should not possess a shilling of permanent revenue. If he could speak a magical word, and by that word convert the whole capitol into gold, the word should not be spoken. The admin-

istration of a fixed revenue, he said, only consolidates the government, and corrupts the people! Sir, I confess I heard these sentiments uttered on this floor, not without deep regret and pain.

I am aware that these, and similar opinions, are espoused by certain persons out of the capitol, and out of this government; but I did not expect so soon to find them here. Consolidation!—that perpetual cry, both of terror and delusion—Consolidation! Sir, when gentlemen speak of the effects of a common fund, belonging to all the states, as having a tendency to consolidation, what do they mean? Do they mean, or can they mean, anything more than that the union of the states will be strengthened, by whatever continues or furnishes inducements to the people of the states to hold together? If they mean merely this, then, no doubt, the public lands as well as everything else in which we have a common interest, tends to consolidation; and to this species of consolidation every true American ought to be attached; it is neither more nor less than strengthening the union itself. This is the sense in which the framers of the constitution use the word consolidation; and in which sense I adopt and cherish it. They tell us, in the letter submitting the constitution to the consideration of the country, that "In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the convention to be less rigid on points of inferior magnitude, than might have been otherwise expected."

This, sir, is Gen. Washington's consolidation. This is the true constitutional consolidation. I wish to see no new powers drawn to the general government; but I confess I rejoice in whatever tends to strengthen the bond that unites us, and encourages the hope that our union may be perpetual. And, therefore, I cannot but feel regret at the expression of such opinions as the gentleman has avowed; because I think their obvious tendency is to weaken the bond of our connexion. I know that there are some persons in the part of the country from which the honorable member comes, who habitually speak of the union in terms of indifference, or even of disparagement. The honorable member himself is not, I trust, and can never be, one of these. They significantly declare, that it is time to calculate the value of the union; and their aim seems to be to enumerate, and to magnify all the evils, real and imaginary, which the government under the union produces.

The tendency of all these ideas and sentiments is obviously to bring the union into discussion, as a mere question of present and temporary expediency—nothing more than a mere matter of profit and loss. The union is to be preserved, while it suits local and temporary purposes to preserve it; and to be sundered whenever it shall be found to thwart such purposes. Union, of itself, is considered by the disciples of this school as hardly a good.—It is only regarded as a possible means of good; or, on the other hand, as a possible means of evil. They cherish no deep and fixed regard for it, flowing from a thorough conviction of its absolute and vital

necessity to our welfare. Sir, I deprecate and deplore this tone of thinking and acting. I deem far otherwise of the union of the states; and so did the framers of the constitution themselves. What they said I believe; fully and sincerely believe, that the union of the states is essential to the prosperity and safety of the states. I am a unionist, and in this sense, a national republican. I would strengthen the ties that hold us together. Far, indeed, in my wishes, very far distant be the day, when our associated and fraternal stripes shall be severed asunder, and when that happy constellation under which we have risen to so much renown, shall be broken up, and be seen sinking, star after star, into obscurity and night!

Among other things, the honorable member spoke of the public debt. To that he holds the public lands pledged, and has expressed his usual earnestness for its total discharge. Sir, I have always voted for every measure for reducing the debt, since I have been in Congress. I wished it paid because it is a debt; and, so far, is a charge upon the industry of the country, and the finances of the government. But, sir, I have observed, that, whenever the subject of the public debt is introduced into the Senate, a morbid sort of fervor is manifested in regard to it, which I have been sometimes at a loss to understand. The debt is not now large, and is in a course of most rapid reduction. A very few years will see it extinguished.—Now I am not entirely able to persuade myself that it is not certain supposed incidental tendencies and effects of this debt, rather than its pressure and charge as a debt, that cause so much anxiety to get rid of it. Possibly it may be regarded as in some degree a tie, holding the different parts of the country together, by considerations of mutual interest. If this be one of its effects, the effect itself is, in my opinion, not to be lamented. Let me not be misunderstood. I would not continue the debt for the sake of any collateral or consequential advantage, such as I have mentioned. I only mean to say, that that consequence itself is not one that I regret. At the same time; that if there are others who would, or who do regret it, I differ from them.

As I have already remarked, sir, it was one among the reasons assigned by the honorable member for his wish to be rid of the public lands altogether, that the public disposition of them, and the revenues derived from them, tend to corrupt the people. This, sir, I confess, passes my comprehension. These lands are sold at public auction, or taken up at fixed prices, to form farms and freeholds. Whom does this corrupt? According to the system of sales, a fixed proportion is everywhere reserved, as a fund for education. Does education corrupt? Is the schoolmaster a corrupter of youth? the spelling book, does it break down the morals of the rising generation? and the Holy Scriptures, are they fountains of corruption? Or if, in the exercise of a provident liberality, in regard to its own property as a great landed proprietor, and to high purposes of utility towards others, the government gives portions of these lands to the making of a canal, or the opening of a road, in the country where the lands themselves are situated, what alarming and overwhelming corruption follows from all this? Can there be nothing pure in government, except the exercise of mere control? Can nothing be done

without corruption, but the impositions of penalty and restraint? Whatever is positively beneficent, whatever is actively good, whatever spreads abroad benefits and blessings which all can see, and all can feel, whatever opens intercourse, augments population, enhances the value of property and diffuses knowledge—must all this be rejected and reprobated as a dangerous and obnoxious policy, hurrying us to the double ruin of a government, turned into despotism by the mere exercise of acts of beneficence, and of a people, corrupted, beyond hope of rescue, by the improvement of their condition?

The gentleman proceeded, sir, to draw a frightful picture of the future. He spoke of the centuries that must elapse, before all the lands could be sold, and the great hardships that the states must suffer while the United States reserved to itself, within their limits, such large portions of soil, not liable to taxation. Sir, this is all, or mostly imagination. If these lands were leasehold property, if they were held by the United States on rent, there would be much in the idea. But they are wild lands, held only till they can be sold; reserved no longer than till somebody will take them up, at low prices. As to their not being taxed, I would ask whether the states themselves, if they owned them, would tax them before sale? Sir, if in any case any state can show that the policy of the United States retards her settlement, or prevents her from cultivating the lands within her limits, she shall have my vote to alter that policy. But I look upon the public lands as a public fund, and that we are no more authorised to give them away gratuitously than to give away gratuitously the money in the treasury. I am quite aware, that the sums drawn annually from the western states make a heavy drain upon them, but that is unavoidable. For that very reason, among others, I have always been inclined to pursue towards them a kind and most liberal policy, but I am not at liberty to forget, at the same time, what is due to other states, and to the solemn engagements under which the government rests.

I come now, Mr. President, to that part of the gentleman's speech, which has been the main occasion of my addressing the Senate. The East! the obnoxious, the rebuked, the always reproached East! We have come in, sir, on this debate, for even more than a common share of accusation and attack. If the honorable member from South Carolina was not our original accuser, he has yet recited the indictment against us with the air and tone of a public prosecutor. He has summoned us to plead on our arraignment; and he tells us we are charged with the crime of a narrow and selfish policy; of endeavouring to restrain emigration to the West, and having that object in view, of maintaining a steady opposition to western measures and western interests. And the cause of all this narrow and selfish policy, the gentleman finds in the tariff—I think he called it the accursed policy of the tariff. This policy, the gentleman tells us, requires multitudes of dependent laborers, a population of paupers, and that it is to secure these at home, that the East opposes whatever may induce to western emigration. Sir, I rise to defend the East. I rise to repel, both the charge itself, and the cause assigned for it. I deny that the East has, at any time, shown an illiberal policy towards the West. I pronounce the whole accusation to be without the least

foundation in any facts, existing either now, or at any previous time. I deny it in the general, and I deny each and all its particulars. I deny the sum total, and I deny the detail. I deny that the East has ever manifested hostility to the West, and I deny that she has adopted any policy that would naturally have led her in such a course.

But the tariff! the tariff! ! Sir, I beg to say in regard to the East, that the original policy of the tariff is not hers, whether it be wise or unwise. New England is not its author. If gentlemen will recur to the tariff of 1816, they will find that this was not carried by New England votes. It was truly more a southern, than an eastern measure. And what votes carried the tariff of 1824? Certainly, not those of New England. It is known to have been made matter of reproach, especially against Massachusetts, that she would not aid the tariff of 1824; and a selfish motive was imputed to her for that also. In point of fact, it is true that she did, indeed, oppose the tariff of 1824. There were more votes in favor of that law in the House of Representatives, not only in each of a majority of the western states, but even in Virginia herself also, than in Massachusetts. It was literally forced upon New England; and this shows how groundless, how void of all probability any charge must be, which imputes to her hostility to the growth of the western states, as naturally flowing from a cherished policy of her own. But leaving all conjectures about causes and motives, I go at once to the fact, and I meet it with one broad, comprehensive, and emphatic negative. I deny, that in any part of her history, at any period of the government, or in relation to any leading subject, New England has manifested such hostility as is charged upon her. On the contrary, I maintain that, from the day of the cession of the territories by the states to Congress, no portion of the country has acted, either with more liberality or more intelligence, on the subject of the western lands, in the new states, than New England. This statement, though strong, is no stronger than the strictest truths will warrant. Let us look at the historical facts. So soon as the cessions were obtained, it became necessary to make provision for the government and disposition of the territory—the country was to be governed. This, for the present, it was obvious, must be by some territorial system of administration. But the soil, also, was to be granted and settled. Those immense regions, large enough almost for an empire, were to be appropriated to private ownership. How was this best to be done? What system for sale and disposition should be adopted? Two modes for conducting the sales presented themselves; the one a southern, and the other a northern mode. It would be tedious, sir, here, to run out these different systems, into all their distinctions, and to contrast their opposite results. That which was adopted was the northern system, and is that which we now see in successful operation in all the new states. That which was rejected, was the system of warrants, surveys, entry, and location; such as prevails south of the Ohio. · It is not necessary to extend these remarks into invidious comparisons. This last system, is that which, as has been emphatically said, has *shingled* over the country to which it was applied, with so many conflicting titles and claims. Everybody acquainted with the subject knows how easily it leads to spec-

ulation and litigation—two great calamities in a new country. From the system actually established, these evils are banished. Now, sir, in effecting this great measure, the first important measure on the whole subject, New England acted with vigor and effect, and the latest posterity of those who settled northwest of the Ohio, will have reason to remember, with gratitude, her patriotism and her wisdom. The system adopted was her own system. She knew, for she had tried and proved its value. It was the oldfashioned way of surveying lands, before the issuing of any title papers, and then of inserting accurate and precise descriptions in the patents or grants, and proceeding with regular reference to metes and bounds.—This gives to original titles, derived from government, a certain and fixed character; it cuts up litigation by the roots, and the settler commences his labor with the assurance that he has a clear title. It is easy to perceive, but not easy to measure, the importance of this in a new country. New England gave this system to the west; and while it remains, there will be spread over all the west one monument of her intelligence in matters of government, and her practical good sense.

At the foundation of the constitution of these new north western states, we are accustomed, sir, to praise the lawgivers of antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character, than the ordinance of '87. That instrument was drawn by Nathan Dane, then, and now a citizen of Massachusetts. It was adopted, as I think I have understood, without the slightest alteration; and certainly it has happened to few men, to be the authors of a political measure of more large and enduring consequence. It fixed, forever, the character of the population in the vast regions northwest of the Ohio, by excluding from them involuntary servitude. It impressed on the soil itself, while it was yet a wilderness, an incapacity to bear up any other than freemen. It laid the interdict against personal servitude, in original compact, not only deeper than all local law, but deeper, also, than all local constitutions. Under the circumstances then existing, I look upon this original and seasonable provision, as a real good attained. We see its consequences at this moment, and we shall never cease to see them, perhaps, while the Ohio shall flow. It was a great and salutary measure of prevention. Sir, I should fear the rebuke of no intelligent gentleman of Kentucky, were I to ask whether, if such an ordinance could have been applied to his own state, while it yet was a wilderness, and before Boone had passed the gap of the Alleghany, he does not suppose it would have contributed to the ultimate greatness of that commonwealth? It is, at any rate not to be doubted, that where it did apply, it has produced an effect not easily to be described, or measured in the growth of the states, and the extent and increase of their population. Now, sir, this great measure again was carried by the North and by the North alone. There were, indeed, individuals elsewhere favorable to it; but it was supported as a measure, entirely by the votes of the northern states. If New England had been governed by the narrow and selfish views now ascribed to her, this very mea-

sure was, of all others, the best calculated to thwart her purposes. It was of all things, the very means of rendering certain a vast emigration from her own population to the west. She looked to that consequence only to disregard it. She deemed the regulation a most useful one to the states that would spring up on the territory, and advantageous to the country at large. She adhered to the principle of it perseveringly, year after year, until it was finally accomplished.

Leaving then, Mr. President, these two great and leading measures, and coming down to our own times, what is there in the history of recent measures of government that exposes New England to this accusation of hostility to western interests? I assert, boldly, that in all measures conducive to the welfare of the West, since my acquaintance here, no part of the country has manifested a more liberal policy. I beg to say, sir, that I do not state this with a view of claiming for her any special regard on that account. Not at all. She does not place her support of measures on the ground of favor conferred—far otherwise. What she has done has been consonant to her view of the general good, and therefore she has done it:—She has sought to make no gain of it; on the contrary, individuals may have felt undoubtedly some natural regret, at finding the relative importance of their own states diminished, by the growth of the West. But New England has regarded that as in the natural course of things, and has never complained of it. Let me see, sir, any one measure favorable to the West, which has been opposed by New England, since the government bestowed its attention to these western improvements. Select what you will, if it be a measure of acknowledged utility, I answer for it, it will be found, that not only were New England votes for it, but that New England votes carried it. Will you take the Cumberland road? who has made that? Will you take the Portland Canal? whose support carried that bill? Sir, at what period beyond the Greek kalends, could these measures, or measures like these, have been accomplished, had they depended on the votes of southern gentlemen? Why, sir, we know that we must have waited till the constitutional notions of those gentlemen had undergone an entire change. Generally speaking, they have done nothing, and can do nothing.—All that has been effected, has been done by the votes of reproached New England. I undertake to say, sir, that if you look to the votes on any one of these measures, and strike out from the list of ayes the names of New England members, it will be found that in every case, the South would then have voted down the West, and the measure would have failed. I do not believe any one instance can be found where this is not strictly true. I do not believe that one dollar has been expended for these purposes beyond the mountain, which could have been obtained without cordial cooperation and support from New England.

Sir, I put the gentleman to the West itself. Let gentlemen who have sat here ten years, come forth and declare, by what aids, and by whose votes they have succeeded, in measures deemed of essential importance to their part of the country. To all men of sense and candor, in or out of Congress, who have any knowledge upon the subject, New England may appeal, for refutation of the reproach now attempted to be cast upon her in this respect.

I take liberty to repeat, that I make no claim, on behalf of New England, or on account of that which I have not stated. She does not profess to have acted out of favor; for it would not become her so to have acted. She solicits for no especial thanks; but, in the consciousness of having done her duty in these things, uprightly and honestly, and with a fair and liberal spirit, be assured she will repel, whenever she thinks the occasion calls for it, an unjust and groundless imputation of partiality and selfishness.

The gentleman alluded to a report of the late Secretary of the Treasury, which, according to his reading or construction of it, recommended what he calls the tariff policy, or a branch of that policy; that is, the restraining of emigration to the West, for the purpose of keeping hands at home, to carry on manufactures. I think, sir, that the gentleman misapprehended the meaning of the secretary, in the interpretation given to his remarks. I understand him only as saying, that since the low price of lands at the West acts as a constant and standing bounty to agriculture, it is, on that account, the more reasonable to provide encouragement for manufactures. But, sir, even if the secretary's observation were to be understood as the gentleman understands it, it would not be a sentiment borrowed from any New England source. Whether it be right or wrong, it does not originate in that quarter.

In the course of these remarks, Mr. President, I have spoken of the supposed desire, on the part of the Atlantic states, to check, or at least not to hasten, western emigration, as a narrow policy. Perhaps I ought to have qualified the expression; because, sir, I am now about to quote the opinion of one, to whom I would impute nothing narrow. I am now about to refer you to the language of a gentleman of much and deserved distinction, now a member of the other House, and occupying a prominent situation there. The gentleman, sir, is from South Carolina. In 1825, a debate arose in the House of Representatives, on the subject of the western road. It happened to me to take some part in the debate; I was answered by the honorable gentleman to whom I allude, and I replied. May I be pardoned, sir, if I read a part of this debate.

"The gentleman from Massachusetts has urged," said Mr. McD., "as one leading reason why the government should make roads to the West, that these roads have a tendency to settle the public lands; that they increase the inducements to settlement, and that this is a national object. Sir, I differ entirely from his views on the subject. I think that the public lands are settling quite fast enough; that our people need want no stimulus to urge them thither; but want rather a check, at least on that artificial tendency to western settlement, which we have created by our own laws.

"The gentleman says, that the great object of government, with respect to those lands, is not to make them a source of revenue, but to get them settled.—What would have been thought of this argument in the old thirteen states? It amounts to this, that those states are to offer a bonus of their own impoverishment, to create a vortex to swallow up our floating population. Look, sir, at the present aspect of the southern states. In no part of Europe will you see the

same indications of decay. Deserted villages—houses falling to ruin—impoverished lands thrown out of cultivation. Sir, I believe that if the public lands had never been sold, the aggregate amount of the national wealth would have been greater at this moment. Our population, if concentrated in the old states and not ground down by tariffs, would have been more prosperous and wealthy. But every inducement has been held out to them to settle in the west, until our population has become sparse, and then the effects of this sparseness are now to be counteracted by another artificial system. Sir, I say if there is any object worthy the attention of this government, it is a plan which shall limit the sale of the public lands. If those lands were sold according to their real value, be it so. But while the government continues as it does to give them away, they will draw the population of the older states, and still farther increase the effect which is already distressingly felt, and which must go to diminish the value of all those states possess. And this, sir, is held out to us as a motive for granting the present appropriation. I would not, indeed, prevent the formation of roads on these considerations, but I certainly would not encourage it. Sir, there is an additional item in the account of the benefits which this government has conferred on the western states. It is the sale of the public lands at the minimum price. At this moment we are selling to the people of the West, lands at one dollar and twenty-five cents, which are worth fifteen, and which would sell at that price if the markets were not glutted."

Mr. WEBSTER observed, in reply, that "the gentleman from South Carolina had mistaken him, if he supposed that it was his wish so to hasten the sales of the public lands, as to throw them into the hands of purchasers, who would sell again. His idea only went as far as this: that the price should be fixed so low as not to prevent the settlement of the lands, yet not so low as to allow speculators to purchase. Mr. W. observed that he could not at all concur with the gentleman from South Carolina, in wishing to restrain the laboring classes of population in the eastern states from going to any part of our territory, where they could better their condition; nor did he suppose such an idea was anywhere entertained. The observations of the gentleman had opened to him new views of policy on this subject, and he thought he now could perceive why some of our states continued to have such bad roads; it must be for the purpose of preventing people from going out of them. The gentleman from South Carolina supposes, that if our population had been confined to the old thirteen states, the aggregate wealth of the country would have been greater than it now is. But sir, it is an error, that the increase of the aggregate of the national wealth, is the object chiefly to be pursued by government. The distribution of the national wealth is an object quite as important as its increase. He was not surprised that the old states, not increasing in population so fast as was expected (for he believed nothing like a decrease was pretended) should be an idea by no means agreeable to gentlemen from those states; we are all reluctant in submitting to the loss of relative importance—but this was nothing more than the natural condition of a country densely populated in one part, and possessing in anoth-

er a vast tract of unsettled lands. The plan of the gentleman went to reverse the order of nature, vainly expecting to retain men within a small and comparatively unproductive territory 'who have all the world before them where to choose.' For his own part, he was in favor of letting population take its own course; he should experience no feeling of mortification if any of his constituents liked better to settle on the Kansas or Arkansas, or elsewhere within our territory; let them go, and be happier if they could. The gentleman says, our aggregate of wealth would have been greater if our population had been restrained within the limits of the old states; but does he not consider population to be wealth? And has not this been increased by the settlement of a new and fertile country?—Such a country presents the most alluring of all prospects to a young and laboring man; it gives him a freehold—it offers to him weight and respectability in society; and above all, it presents to him a prospect of a permanent provision for his children. Sir, these are inducements which never were resisted, and never will be; and, were the whole extent of country filled with population up to the Rocky mountains, these inducements would carry that population forward to the shores of the Pacific ocean. Sir, it is in vain to talk; individuals will seek their own good, and not any artificial aggregate of the national wealth. A young enterprising and hardy agriculturist, can conceive of nothing better to him than plenty of good, cheap land."

Sir, with the reading of these extracts I leave the subject. The Senate will bear me witness that I am not accustomed to allude to local opinions, nor to compare, nor contrast different portions of the country.—I have often suffered things to pass which I might properly enough have considered as deserving a remark, without any observation. But I have felt it my duty, on this occasion, to vindicate the state I represent from charges and imputations on her public character and conduct, which I know to be undeserved and unfounded. If advanced elsewhere, they might be passed, perhaps, without notice. But whatever is said here, is supposed to be entitled to public regard, and to deserve public attention—it derives importance and dignity from the place where it is uttered. As a true representative of the state which has sent me here, it is my duty, and a duty which I shall fulfil, to place her history and her conduct, her honor and her character, in their just and proper light, so often as I think an attack is made upon her, so respectable as to deserve to be repelled.

Mr. W. concluded by moving the indefinite postponement of the resolution.

Mr. Benton replied.

Thursday, January 21. Mr. Chambers of Maryland expressed a hope, that the Senate would postpone the discussion until Monday, as Mr. Webster, who had taken a part in it, had unavoidable engagements out of the Senate, and could not conveniently attend.

Mr. Hayne said that some things had fallen from the gentleman from Massachusetts which had created sensations from which he would desire at once to relieve himself. The gentleman had discharged his weapon, and he (Mr. H.) wished for an opportunity to return the fire.

Mr. Webster remarked that he was ready to receive it, and wished the discussion to proceed. Mr. Hayne then took the floor, and spoke at much length. After which Mr. Webster addressed the Senate as follows :—

Mr. President,—When the mariner has been tossed, for many days, in thick weather, and on an unknown sea, he naturally avails himself of the first pause in the storm, the earliest glance of the sun, to take his latitude, and ascertain how far the elements have driven him from his true course. Let us imitate this prudence, and, before we float farther on the waves of this debate, refer to the point from which we departed, that we may at least be able to conjecture where we now are. I ask for the reading of the resolution.

The Secretary read the resolution, as follows:

"*Resolved*, That the Committee on Public Lands be instructed to inquire and report the quantity of public lands remaining unsold within each state and territory, and whether it be expedient to limit, for a certain period, the sales of the public lands to such lands only as have heretofore been offered for sale, and are now subject to entry at the minimum price. And, also, whether the office of Surveyor General, and some of the Land Offices, may not be abolished without detriment to the public interest; or whether it be expedient to adopt measures to hasten the sales, and extend more rapidly the surveys of the public lands."

We have thus heard, sir, what the resolution is, which is actually before us for consideration; and it will readily occur to every one that it is almost the only subject about which something has not been said in the speech, running through two days, by which the Senate has been now entertained by the gentleman from South Carolina. Every topic in the wide range of our public affairs, whether past or present—Everything, general or local, whether belonging to national politics, or party politics, seems to have attracted more or less of the honorable member's attention, save only the resolution before the Senate. He has spoken of everything but the public lands. They, have escaped his notice. To that subject, in all his excursions, he has not paid even the cold respect of a passing glance.

When this debate, sir, was to be resumed, on Thursday morning, it so happened that it would have been convenient for me to be elsewhere. The honorable member, however, did not incline to put off the discussion to another day. He had a shot, he said, to return, and he wished to discharge it. That shot, sir, which it was kind thus to inform us was coming, that we might stand out of the way, or prepare ourselves to fall before it, and die with decency, has now been received. Under all advantages, and with expectation awakened by the tone which preceded it, it has been discharged, and has spent its force. It may become me to say no more of its effect, than that, if nobody is found, after all, either killed or wounded by it, it is not the first time, in the history of human affairs, that the vigor and success of the war have not quite come up to the lofty and sounding phrase of the manifesto.

The gentleman, sir, in declining to postpone the debate, told the Senate, with the emphasis of his hand upon his heart, that there was something rankling *here*, which he wished to relieve. [Mr. Hayne rose, and disclaimed having used the word *rankling*.] It would not, Mr. President, be safe for the honorable member to appeal to those around him, upon the question, whether he did, in fact, make use of that word. But he may have been unconscious of it. At any rate, it is enough that he disclaims it. But still with or without the use of that particular word, he had yet something *here*, he said, of which he wished to rid himself by an immediate reply. In this respect, sir, I have a great advantage over the honorable gentleman. There is nothing *here*, sir, which gives me the slightest uneasiness; neither fear, nor anger, nor that, which is sometimes more troublesome than either—the consciousness of having been in the wrong. There is nothing, either originating *here*, or now received *here* by the gentleman's shot. Nothing original, for I had not the slightest feeling of disrespect or unkindness towards the honorable member. Some passages, it is true, had occurred since our acquaintance in this body, which I could have wished might have been otherwise; but I had used philosophy and forgotten them. When the honorable member rose, in his first speech, I paid him the respect of attentive listening; and when he sat down, though surprised, and I must say even astonished, at some of his opinions, nothing was farther from my intention than to commence any personal warfare: and through the whole of the few remarks I made in answer, I avoided, studiously and carefully, everything which I thought possible to be construed into disrespect. And, sir, while there is thus, nothing originating *here*, which I wished, at any time, or now wish to discharge, I must repeat, also, that nothing has been received *here*, which *rankles*, or in any way gives me annoyance. I will not accuse the honorable member of violating the rules of civilized war,—I will not say, that he poisoned his arrows. But whether his shafts were, or were not, dipped in that, which would have caused rankling, if they had reached, there was not, as it happened, quite strength enough in the bow to bring them to their mark. If he wishes now to gather up those shafts, he must look for them elsewhere; they will not be found fixed and quivering in the object, at which they were aimed.

The honorable member complained that I had slept on his speech. I must have slept on it, or not slept at all. The moment the honorable member sat down, his friend from Missouri rose, and with much honeyed commendation of the speech, suggested that the impressions which it had produced, were too charming and delightful to be disturbed by other sentiments or other sounds, and proposed that the Senate should adjourn.* Would it have been quite amiable, in me, sir, to interrupt this excellent good feeling? Must I not have been absolutely malicious, if I could have thrust myself forward, to destroy sensations, thus pleasing? Was it not much better and kinder, both to sleep upon them myself, and to allow others, also, the pleasure of sleeping upon them? But if it be meant, by sleeping upon his speech, that I took time to prepare a reply to it, it is quite a mistake; owing to other engagements, I could not employ even the interval, between the adjournment of the Senate, and its meeting

the next morning, in attention to the subject of this debate. Nevertheless, sir, the mere matter of fact is undoubtedly true—I did sleep on the gentleman's speech; and slept soundly. And I slept equally well on his speech of yesterday, to which I am now replying. It is quite possible that in this respect, also, I possess some advantage over the honorable member, attributable, doubtless, to a cooler temperament on my part; for, in truth, I slept upon his speeches remarkably well. But the gentleman inquires, why *he* was made the object of such a reply? Why was *he* singled out? If an attack has been made on the East, he, he assures us, did not begin it—it was the gentleman from Missouri. Sir, I answered the gentleman's speech, because I happened to hear it: and because, also, I chose to give an answer to that speech, which, if unanswered, I thought most likely to produce injurious impressions. I did not stop to inquire who was the original drawer of the bill. I found a responsible endorser before me, and it was my purpose to hold him liable, and to bring him to his just responsibility, without delay. But, sir, this interrogatory of the honorable member was only introductory to another. He proceeded to ask me, whether I had turned upon him, in this debate, from the consciousness that I should find an overmatch, if I ventured on a contest with his friend from Missouri. If, sir, the honorable member, *ex gratia modestiæ*, had chosen thus to defer to his friend, and to pay him a compliment, without intentional disparagement to others, it would have been quite according to the friendly courtesies of debate, and not at all ungrateful to my own feelings. I am not one of those, sir, who esteem any tribute of regard, whether light and occasional, or more serious and deliberate, which may be bestowed on others, as so much unjustly withholden from themselves. But the tone and manner of the gentleman's question, forbid me that I thus interpret it. I am not at liberty to consider it as nothing more than a civility to his friend. It had an air of taunt and disparagement, something of the loftiness of asserted superiority, which does not allow me to pass it over without notice. It was put as a question for me to answer, and so put, as if it were difficult for me to answer, Whether I deemed the member from Missouri an overmatch for myself, in debate here. It seems to me, sir, that this is extraordinary language, and an extraordinary tone, for the discussions of this body.

Matches and overmatches! Those terms are more applicable elsewhere than here, and fitter for other assemblies than this.—Sir, the gentleman seems to forget where, and what, we are. This is a Senate: a Senate of equals: of men of individual honor and personal character, and of absolute independence. We know no masters: we acknowledge no dictators. This is a hall for mutual consultation and discussion; not an arena for the exhibition of champions. I offer myself, sir, as a match for no man; I throw the challenge of debate at no man's feet. But, then, sir, since the honorable member has put the question, in a manner that calls for an answer; I will give him an answer; and I tell him, that, holding myself to be the humblest of the members here, I yet know nothing in the arm of his friend from Missouri, either alone, or when aided by the arm of *his* friend from South Carolina, that need deter, even me, from espousing whatever

opinions I may choose to espouse, from debating whenever I may choose to debate, or from speaking whatever I may see fit to say, on the floor of the Senate. Sir, when uttered as matter of commendation or compliment, I should dissent from nothing which the honorable member might say of his friend. Still less do I put forth any pretensions of my own. But, when put to me as matter of taunt, I throw it back, and say to the gentleman that he could possibly say nothing less likely than such a comparison, to wound my pride of personal character. The anger of its tone rescued the remark from intentional irony, which, otherwise, probably, would have been its general acceptation. But, sir, if it be imagined that by this mutual quotation and commendation; if it be supposed that, by casting the characters of the drama, assigning to each his part: to one the attack; to another the cry of onset; or, if it be thought that by a loud and empty vaunt of anticipated victory, any laurels are to be won here; if it be imagined, especially, that any, or all these things will shake any purpose of mine, I can tell the honorable member, once for all, that he is greatly mistaken, and that he is dealing with one of whose temper and character he has yet much to learn. Sir, I shall not allow myself, on this occasion, I hope on no occasion, to be betrayed into any loss of temper; but if provoked, as I trust I never shall be, into crimination and recrimination, the honorable member may, perhaps, find, that, in that contest, there will be blows to take as well as blows to give; that others can state comparisons as significant, at least, as his own, and that his impunity may, possibly, demand of him whatever powers of taunt and sarcasm he may possess. I commend him to a prudent husbandry of his resources.

But, sir, the Coalition! The Coalition! Ay, "the murdered Coalition!" The gentleman asks, if I were led or frighted into this debate by the spectre of the Coalition—"Was it the ghost of the murdered Coalition," he exclaims, "which haunted the member from Massachusetts; and which, like the ghost of Banquo, would never down?" "The murdered Coalition!" Sir, this charge of a coalition, in reference to the late administration, is not original with the honorable member. It did not spring up in the Senate. Whether as a fact, as an argument, or as an embellishment, it is all borrowed. He adopts it, indeed, from a very low origin, and a still lower present condition. It is one of the thousand calumnies with which the press teemed, during an excited political canvass. It was a charge, of which there was not only no proof or probability, but which was, in itself, wholly impossible to be true. No man of common information ever believed a syllable of it. Yet it was of that class of falsehoods, which, by continued repetition, through all the organs of detraction and abuse, are capable of misleading those who are already far misled, and of further fanning passion, already kindling into flame. Doubtless it served in its day, and, in greater or less degree, the end designed by it. Having done that, it has sunk into the general mass of stale and loathed calumnies. It is the very cast off slough of a polluted and shameless press. Incapable of further mischief, it lies in the sewer, lifeless and despised. It is not now, sir, in the power of the honorable member to give it dignity or decency, by attempting to elevate it, and to introduce it into the Senate. He cannot change

it from what it is, an object of general disgust and scorn.—On the contrary, the contact, if he choose to touch it, is more likely to drag him down, down, to the place where it lies itself.

But, sir, the honorable member was not, for other reasons, entirely happy in his allusion to the story of Banquo's murder, and Banquo's ghost. It was not, I think, the friends, but the enemies of the murdered Banquo, at whose bidding his spirit would not *down*. The honorable gentleman is fresh in his reading of the English classics, and can put me right if I am wrong; but, according to my poor recollection, it was at those who had begun with caresses, and ended with foul and treacherous murder, that the gory locks were shaken! The ghost of Banquo, like that of Hamlet, was an honest ghost. It disturbed no innocent man. It knew where its appearance would strike terror, and who would cry out, a ghost! It made itself visible in the right quarter, and compelled the guilty, and the conscience smitten, and none others, to start, with,

> *"Pr'ythee, see there! behold!—look! lo*
> *If I stand here, I saw him!"*

THEIR eyeballs were seared (was it not so, sir?) who had thought to shield themselves, by concealing their own hand, and laying the imputation of the crime on a low and hireling agency in wickedness; who had vainly attempted to stifle the workings of their own coward consciences, by ejaculating, through white lips and chattering teeth, "Thou canst not say I did it!" I have misread the great poet if those who had no way partaken in the deed of the death, either found that they were, or *feared that they should be*, pushed from their stools by the ghost of the slain, or exclaimed, to a spectre created by their own fears, and their own remorse, "Avaunt! and quit our sight!"

There is another particular, sir, in which the honorable member's quick perception of resemblances might, I should think, have seen something in the story of Banquo, making it not altogether a subject of the most pleasant contemplation. Those who murdered Banquo, what did they win by it?—Substantial good? Permanent power? Or disappointment, rather, and sore mortification;—dust and ashes—the common fate of vaulting ambition, overleaping itself? Did not evenhanded justice ere long commend the poisoned chalice to their own lips? Did they not soon find that for another they had "filed their mind?" that their ambition, though apparently for the moment succesful, had but put a barren sceptre in their grasp?—Ay, sir,

> "A barren sceptre in their gripe,
> *Thence to be wrenched by an unlineal hand,*
> *No son of their's succeeding."*

Sir, I need pursue the allusion no farther. I leave the honorable gentleman to run it out at his leisure, and to derive from it all the gratification it is calculated to administer. If he finds himself pleased with the associations, and prepared to be quite satisfied, though the parallel should be entirely completed, I had almost said, I am satisfied also—but that I shall think of. Yes, sir, I will think of that.

In the course of my observations the other day, Mr. President, I paid a passing tribute of respect to a very worthy man, Mr. Dane, of Massachusetts. It so happened that he drew the ordinance of 1787, for the government of the northwestern territory. A man of so much ability, and so little pretence; of so great a capacity to do good, and so unmixed a disposition to do it for its own sake; a gentleman who had acted an important part, forty years ago, in a measure the influence of which is still deeply felt in the very matter which was the subject of debate, might, I thought, receive from me a commendatory recognition.

But the honorable member was inclined to be facetious on the subject. He was rather disposed to make it matter of ridicule, that I had introduced into the debate the name of one Nathan Dane, of whom he assures us he had never before heard. Sir, if the honorable member had never before heard of Mr. Dane, I am sorry for it. It shows him less acquainted with the public men of the country, than I had supposed. Let me tell him, however, that a sneer from him, at the mention of the name of Mr. Dane, is in bad taste. It may well be a high mark of ambition, sir, either with the honorable gentleman or myself, to accomplish as much to make our names known to advantage, and remembered with gratitude, as Mr. Dane has accomplished. But the truth is, sir, I suspect, that Mr. Dane lives a little too far north. He is of Massachusetts, and too near the north star to be reached by the honorable gentleman's telescope. If his sphere had happened to range south of Mason and Dixon's line, he might, probably, have come within the scope of his vision!

I spoke, sir, of the ordinance of 1787, which prohibited slavery, in all future times, northwest of the Ohio, as a measure of great wisdom and foresight; and one which had been attended with highly beneficial and permanent consequences. I supposed, that on this point, no two gentlemen in the Senate could entertain different opinions. But, the simple expression of this sentiment has led the gentleman, not only into a labored defence of slavery, in the abstract, and on principle, but, also, into a warm accusation against me, as having attacked the system of domestic slavery now existing in the southern states. For all this, there was not the slightest foundation, in any thing said or intimated by me. I did not utter a single word which any ingenuity could torture into an attack on the slavery of the South. I said, only, that it was highly wise and useful in legislating for the northwestern country, while it was yet a wilderness, to prohibit the introduction of slaves: and added, that I presumed, in the neighbouring state of Kentucky, there was no reflecting and intelligent gentleman, who would doubt, that if the same prohibition had been extended, at the same early period, over that commonwealth, her strength and population would, at this day, have been far greater than they are.—If these opinions be thought doubtful, they are, nevertheless, I trust, neither extraordinary nor disrespectful. They attack nobody and menace nobody. And yet, sir, the gentleman's optics have discovered, even in the mere expression of this sentiment, what he calls the very spirit of the Missouri question! He represents me as making an onset on the whole South, and manifesting a spirit which would intefere with, and disturb, their domes-

tic condition! Sir, this injustice no otherwise surprises me, than as it is committed here, and committed without the slightest pretence of ground for it. I say it only surprises me, as being done here; for I know full well, that it is, and has been, the settled policy of some persons in the South, for years, to represent the people of the North as disposed to intefere with them, in their own exclusive and peculiar concerns. This is a delicate and sensitive point, in southern feeling; and of late years it has always been touched, and generally with effect, whenever the object has been to unite the whole South against northern men, or northern measures. This feeling, always carefully kept alive, and maintained at too intense a heat to admit discrimination or reflection, is a lever of great power in our political machine. It moves vast bodies, and gives to them one and the same direction.—But it is without all adequate cause; and the suspicion which exists, wholly groundless.—There is not, and never has been, a disposition in the North to intefere with these interests of the South. Such interference has never been supposed to be within the power of government; nor has it been, in any way, attempted. The slavery of the South has always been regarded as a matter of domestic policy, left with the states themselves, and with which the federal government had nothing to do. Certainly, sir, I am, and ever have been of that opinion. The gentleman, indeed, argues that slavery, in the abstract, is no evil. Most assuredly, I need not say I differ with him, altogether and most widely, on that point. I regard domestic slavery as one of the greatest of evils, both moral and political. But though it be a malady, and whether it be curable, and if so, by what means; or, on the other hand, whether it be the *vulnus immedicabile* of the social system, I leave it to those whose right and duty it is to inquire and to decide. And this I believe, sir, is, and uniformly has been, the sentiment of the North. Let us look a little at the history of this matter.

When the present constitution was submitted for the ratification of the people, there were those who imagined that the powers of the government which it proposed to establish, might, perhaps, in some possible mode, be exerted in measures tending to the abolition of slavery. This suggestion would of course attract much attention in the southern conventions. In that of Virginia, Governor Randolph said:

"I hope there is none here, who, considering the subject in the calm light of philosophy, will make an objection dishonorable to Virginia—that at the moment they are securing the rights of their citizens, an objection is started, that there is a spark of hope that those unfortunate men now held in bondage, may, by the operation of the general government, be made free."

At the very first Congress, petitions on the subject were presented, if I mistake not, from different states. The Pennsylvania society for promoting the abolition of slavery took a lead, and laid before Congress a memorial, praying Congress to promote the abolition by such powers as it possessed.—This memorial was referred, in the House of Representatives, to a select committee, consisting of Mr. Foster, of New Hampshire, Mr. Gerry, of Massachusetts, Mr. Huntington, of Connecticut, Mr. Lawrence, of New York, Mr. Dickinson, of New

Jersey, Mr. Hartley of Pennsylvania, and Mr. Parker, of Virginia,—all of them, sir, as you will observe, northern men, but the last. This committee, made a report, which was committed to a committee of the whole House, and there considered and discussed on several days; and being amended, although without material alteration, it was made to express three distinct propositions, on the subject of slavery and the Slave Trade.—First, in the words of the constitution; that Congress could not, prior to the year 1808, prohibit the migration or importation of such persons as any of the states, then existing, should think proper to admit. Second, that Congress had authority to restrain the citizens of the United States from carrying on the African slave trade, for the purpose of supplying foreign countries. On this proposition, our early laws against those who engage in that traffic are founded. The third proposition, and that which bears on the present question, was expressed in the following terms:

"*Resolved*, That Congress have no authority to interfere in the emancipation of slaves, or in the treatment of them in any of the states; it remaining with the several states alone to provide rules and regulations therein, which humanity and true policy may require."

This resolution received the sanction of the House of Representatives so early as March, 1790. And now, sir, the honorable member will allow me to remind him, that not only were the select committee who reported the resolution, with a single exception, all northern men, but also that of the members then composing the House of Representatives, a large majority, I believe nearly two-thirds, were northern men also.

The House agreed to insert these resolutions in its journal; and from that day to this, it has never been maintained or contended, that Congress had any authority to regulate, or interfere with, the condition of slaves in the several states. No northern gentleman, to my knowledge, has moved any such question in either House of Congress.

The fears of the South, whatever fears they might have entertained, were allayed and quieted by this early decision; and so remained, till they were excited afresh, without cause, but for collateral and indirect purposes. When it become necessary, or was thought so, by some political persons, to find an unvarying ground for the exclusion of northern men from confidence and from lead in the affairs of the Republic, then, and not till then, the cry was raised, and the feeling industriously excited, that the influence of northern men in the public councils would endanger the relation of master and slave. For myself, I claim no other merit, than that this gross and enormous injustice towards the whole North, has not wrought upon me to change my opinions, or my political conduct. I hope I am above violating my principles, even under the smart of injury and false imputations. Unjust suspicions and undeserved reproach, whatever pain I may experience from them, will not induce me, I trust, nevertheless, to overstep the limits of constitutional duty, or to encroach on the rights of others. The domestic slavery of the South I leave where I find it—in the hands of their own governments. It is their affair, not mine. Nor do I complain of the peculiar effect which the magnitude of that population has had in

the distribution of power under this federal government. We know, sir, that the representation of the states in the other House is not equal. We know that great advantage, in that respect, is enjoyed by the slave-holding states; and we know, too, that the intended equivalent for that advantage, that is to say, the imposition of direct taxes in the same ratio, has become merely nominal; the habit of the government being almost invariably to collect its revenue from other sources and in other modes. Nevertheless, I do not complain: nor would I countenance any movement to alter this arrangement of representation. It is the original bargain, the compact—let it stand; let the advantage of it be fully enjoyed. The union itself is too full of benefit to be hazarded in propositions for changing its original basis. I go for the constitution as it is, and for the union as it is. But I am resolved not to submit, in silence, to accusations, either against myself individually, or against the North, wholly unfounded and unjust; accusations which impute to us a disposition to evade the constitutional compact, and to extend the power of the government over the internal laws and domestic condition of the states. All such accusations, wherever and whenever made, all insinuations of the existence of any such purposes, I know, and feel to be groundless and injurious. And we must confide in southern gentlemen themselves; we must trust to those whose integrity of heart and magnanimity of feeling will lead them to a desire to maintain and disseminate truth, and who possess the means of its diffusion with the southern public; we must leave it to them to disabuse that public of its prejudices. But, in the meantime, for my own part, I shall continue to act justly, whether those towards whom justice is exercised receive it with candor or with contumely.

Having had occasion to recur to the ordinance of 1787, in order to defend myself against the inferences which the honorable member has chosen to draw from my former observations on that subject, I am not willing now entirely to take leave of it without another remark. It need hardly be said, that that paper expresses just sentiments on the great subject of civil and religious liberty. Such sentiments were common, and abound in all our state papers of that day. But this ordinance did that which was not so common, and which is not, even now, universal; that is, it set forth and declared, *as a high and binding duty of government itself*, to encourage schools, and advance the means of education; on the plain reason, that religion, morality, and knowledge, are necessary to good government, and to the happiness of mankind. One observation further. The important provision incorporated into the constitution of the United States, and several of those of the states, and recently, as we have seen, adopted into the reformed constitution of Virginia, restraining legislative power, in questions of private right, and from impairing the obligation of contracts, is first introduced and established, as far as I am informed, as matter of express written constitutional law, in this ordinance of 1787. And I must add, also, in regard to the author of the ordinance, who has not had the happiness to attract the gentleman's notice, heretofore, nor to avoid his sarcasm now, that he was chairman of that select committee of the old Congress, whose report first expressed the strong sense of that body, that the

old confederation was not adequate to the exigencies of the country, and recommending to the states to send delegates to the convention which formed the present constitution.—(NOTE 1.)

An attempt has been made to transfer, from the north to the south, the honor of this exclusion of slavery from the northwestern territory. The journal, without argument or comment, refutes such attempt. The cession by Virginia was made, March, 1784. On the 19th of April following, a committee, consisting of Messrs. Jefferson, Chase, and Howell, reported a plan for a temporary government of the territory, in which was this article: "that, after the year 1800, there shall be neither slavery, nor involuntary servitude in any of the said states, otherwise than in punishment of crimes, whereof the party shall have been convicted." Mr. Spaight, of North Carolina, moved to strike out this paragraph. The question was put, according to the form then practised: "shall these words stand, as part of the plan," &c. New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania—seven states voted in the affirmative. Maryland, Virginia, and South Carolina, in the negative. North Carolina was divided. As the consent of nine states was necessary, the words could not stand, and were struck out accordingly. Mr. Jefferson voted for the clause, but was overruled by his colleagues.

In March of the next year, (1785,) Mr. King, of Massachusetts, seconded by Mr. Ellery, of Rhode Island, proposed the formerly rejected article, with this addition—*And that this regulation shall be an article of compact, and remain a fundamental principle of the constitutions between the thirteen original states, and each of the states described in the Resolve*," &c. On this clause, which provided the adequate and thorough security, the eight northern states at that time voted affirmatively, and the four southern states negatively. The votes of nine states were not yet obtained, and thus, the provision was again rejected by the southern states. The perseverance of the North held out, and two years afterwards the object was attained. It is no derogation from the credit, whatever that may be, of drawing the ordinance, that its principles had before been prepared and discussed, in the form of resolutions. If one should reason in that way, what would become of the distinguished honor of the author of the Declaration of Independence? There is not a sentiment in that paper which had not been voted and resolved in the assemblies, and other popular bodies in the country, over and over again.

But the honorable member has now found out that this gentleman (Mr. Dane) was a member of the Hartford Convention. However uninformed the honorable member may be of characters and occurrences at the North, it would seem that he has at his elbow, on this occasion, some high-minded and lofty spirit, some magnanimous and true-hearted monitor, possessing the means of local knowledge, and ready to supply the honorable member with everything, down even to forgotten and moth-eaten two-penny pamphlets, which may be used to the disadvantage of his own country. But, as to the Hartford Convention, sir, allow me to say, that the proceedings of that body seem now to be less read and studied in New England than farther south. They appear to be looked to, not in New Eng-

land, but elsewhere, for the purpose of seeing how far they may serve as a precedent. But they will not answer the purpose—they are quite too tame. The latitude in which they originated was too cold. Other conventions, of more recent existence, have gone a whole bar's length beyond it. The learned doctors of Colleton and Abbeville have pushed their commentaries on the Hartford collect so far that the original text-writers are thrown entirely into the shade I have nothing to do, sir, with the Hartford Convention. Its journal, which the gentleman has quoted, I never read. So far as the honorable member may discover in its proceedings a spirit, in any degree resembling that which was avowed and justified in those other conventions to which I have alluded, or so far as those proceedings can be shown to be disloyal to the constitution, or tending to disunion, so far I shall be as ready as any one to bestow on them reprehension and censure.

Having dwelt long on this convention, and other occurrences of that day, in the hope, probably, (which will not be gratified) that I should leave the course of this debate to follow him, at length, in those excursions, the honorable member returned, and attempted another object. He referred to a speech of mine in the other House, the same which I had occasion to allude to myself the other day; and has quoted a passage or two from it, with a bold, though uneasy and laboring air of confidence, as if he had detected in me an inconsistency. Judging from the gentleman's manner, a stranger to the course of the debate, and to the point in discussion, would have imagined, from so triumphant a tone, that the honorable member was about to overwhelm me with a manifest contradiction. Any one who heard him, and who had not heard what I had, in fact, previously said, must have thought me routed and discomfited, as the gentleman had promised. Sir, a breath blows all this triumph away. There is not the slightest difference in the sentiments of my remarks on the two occasions. What I said here on Wednesday, is in exact accordance with the opinion expressed by me in the other House in 1825. Though the gentleman had the metaphysics of Hudibras—though he were able

> *"To sever and divide*
> *A hair 'twixt north and northwest side,"*

he yet could not insert his metaphysical scissors between the fair reading of my remarks in 1825, and what I said here last week. There is not only no contradiction, no difference, but, in truth, too exact a similarity, both in thought and language, to be entirely in just taste. I had myself quoted the same speech; had recurred to it, and spoke with it open before me; and much of what I said was little more than a repetition from it. In order to make finishing work with this alleged contradiction, permit me to recur to the origin of this debate, and review its course. This seems expedient, and may be done as well now as at any time.

Well, then, its history is this: The honorable member from Connecticut moved a resolution, which constitutes the first branch of that which is now before us; that is to say, a resolution, instructing the committee on public lands to inquire into the expediency of limiting, for a certain period, the sales of the public lands, to such

as have heretofore been offered for sale; and whether sundry offices connected with the sales of the lands, might not be abolished, without detriment to the public service.

In the progress of the discussion which arose on this resolution, an honorable member from New Hampshire moved to amend the resolution, so as entirely to reverse its object; that is, to strike it all out, and insert a direction to the committee to inquire into the expediency of adopting measures to hasten the sales, and extend more rapidly the surveys of the lands.

The honorable member from Maine, [Mr. Sprague,] suggested that both those propositions might well enough go for consideration to the committee; and in this state of the question, the member from South Carolina addressed the Senate in his first speech. He rose, he said, to give us his own free thoughts on the public lands. I saw him rise, with pleasure, and listened with expectation, though before he concluded, I was filled with surprise. Certainly, I was never more surprised, than to find him following up, to the extent he did, the sentiments and opinions, which the gentleman from Missouri had put forth, and which it is known he has long entertained.

I need not repeat at large the general topics of the honorable gentleman's speech.—When he said yesterday, that he did not attack the eastern states, he certainly must have forgotten, not only particular remarks, but the whole drift and tenor of his speech; unless he means, by not attacking, that he did not commence hostilities,—but that another had preceded him in the attack. He, in the first place, disapproved of the whole course of the government, for forty years, in regard to its dispositions of the public land; and then turning northward and eastward, and fancying he had found a cause for alleged narrowness and niggardliness in the "accursed policy" of the tariff, to which he represented the people of New England as wedded, he went on, for a full hour, with remarks, the whole scope of which was to exhibit the results of this policy, in feelings and in measures unfavorable to the west. I thought his opinions unfounded and erroneous, as to the general course of the government, and ventured to reply to them.

The gentleman had remarked on the analogy of other cases, and quoted the conduct of European governments towards their own subjects, settling on this continent, as in point, to show, that we had been harsh and rigid in selling, when we should have given the public lands to settlers, without price. I thought the honorable member had suffered his judgment to be betrayed by a false analogy; that he was struck with an appearance of resemblance, where there was no real similitude. I think so still. The first settlers of North America were enterprising spirits, engaged in private adventure, or fleeing from tyranny at home. When arrived here, they were forgotten by the mother country, or remembered only to be oppressed. Carried away again by the appearance of analogy, or struck with the eloquence of the passage, the honorable member yesterday observed, that the conduct of government towards the western emigrants, or my representation of it, brought to his mind a celebrated speech in the British parliament. It was, sir, the speech of Col. Barre. On the question of the stamp act, or tea tax, I forget which,

Col. Barre had heard a member on the treasury bench argue, that the people of the United States, being British colonists, planted by the maternal care, nourished by the indulgence, and protected by the arms of England, would not grudge their mite to relieve the mother country from the heavy burden under which she groaned. The language of Col. Barre, in reply to this, was—They planted by your care? Your oppression planted them in America. They fled from your tyranny, and grew by your neglect of them. So soon as you began to care for them, you showed your care by sending persons to spy out their liberties, misrepresent their character, prey upon them and eat out their substance.

And how does the honorable gentleman mean to maintain, that language like this is applicable to the conduct of the government of the United States towards the western emigrants, or to any representation given by me of that conduct? Were the settlers in the West driven thither by our oppression? Have they flourished only by our neglect of them? Has the government done nothing but to prey upon them, and eat out their substance? Sir, this fervid eloquence of the British speaker, just, when and where it was uttered, and fit to remain an exercise for the schools, is not a little out of place, when it is brought thence to be applied here, to the conduct of our own country towards her own citizens. From America to England, it may be true; from Americans to their own government it would be strange language. Let us leave it, to be recited and declaimed by our boys, against a foreign nation; not introduce it here, to recite and declaim ourselves against our own.

But I come to the point of the alleged contradiction. In my remarks on Wednesday, I contended that we could not give away gratuitously all the public lands; that we held them in trust; that the government had solemnly pledged itself to dispose of them as a common fund for the common benefit, and to sell and settle them as its discretion should dictate. Now, sir, what contradiction does the gentleman find to this sentiment, in the speech of 1825? He quotes me as having then said, that we ought not to hug these lands as a very great treasure. Very well, sir, supposing me to be accurately reported, in that expression, what is the contradiction? I have not now said, that we should hug these lands as a favorite source of pecuniary income. No such thing. It is not my view. What I have said, and what I do say, is, that they are a common fund—to be disposed of for the common benefit—to be sold at low prices for the accommodation of settlers, keeping the object of settling the lands as much in view, as that of raising money from them. This I say now, and this I have always said. Is this hugging them as a favorite treasure? Is there no difference between hugging and hoarding this fund, on the one hand, as a great treasure, and on the other, of disposing of it at low prices, placing the proceeds in the general treasury of the union? My opinion is, that as much is to be made of the land, as fairly and reasonably may be, selling it all the while at such rates as to give the fullest effect to settlement.—This is not giving it all away to the states, as the gentleman would propose; nor is it hugging the fund closely and tenaciously, as a favorite treasure; but it is, in my judgment, a just and wise policy, perfectly according

with all the various duties which rest on government. So much for my contradiction. And what is it? Where is the ground of the gentleman's triumph? What inconsistency in word or doctrine, has he been able to detect? Sir, if this be a sample of that discomfiture, with which the honorable gentleman threatened me, commend me to the word *discomfiture* for the rest of my life.

But, after all, this is not the point of the debate; and I must now bring the gentleman back to what is the point.

The real question between me and him is, has the doctrine been advanced at the South or the East, that the population of the West should be retarded, or at least need not be hastened, on account of its effect to drain off the people from the Atlantic states? Is this doctrine, as has been alleged, of eastern origin? That is the question. Has the gentleman found anything, by which he can make good his accusation? I submit to the Senate, that he has entirely failed; and as far as this debate has shown, the only person who has advanced such sentiments, is a gentleman from South Carolina, and a friend to the honorable member himself.—The honorable gentleman has given no answer to this; there is none which can be given. The simple fact, while it requires no comment to enforce it, defies all argument to refute it. I could refer to the speeches of another southern gentleman, in years before, of the same general character, and to the same effect, as that which has been quoted; but I will not consume the time of the Senate by the reading of them.

So then, sir, New England is guiltless of the policy of retarding western population, and of all envy and jealousy of the growth of the new states. Whatever there be of that policy in the country, no part of it is her's. If it has a local habitation, the honorable member has probably seen, by this time, where to look for it; and if it now has received a name, he has himself christened it.

We approach, at length, sir, to a more important part of the honorable gentleman's observations. Since it does not accord with my views of justice and policy to give away the public lands altogether, as mere matter of gratuity, I am asked by the honorable gentleman on what ground it is, that I consent to vote them away in particular instances? How, he inquires, do I reconcile with these professed sentiments, my support of measures appropriating portions of the lands to particular roads, particular canals, particular rivers, and particular institutions of education in the West? This leads, sir, to the real and wide difference, in political opinion, between the honorable gentleman and myself. On my part, I look upon all these objects, as connected with the common good, fairly embraced in its object and its terms; he, on the contrary, deems them all, if good at all, only local good. This is our difference. The interrogatory which he proceeded to put, at once explains this difference. "What interest," asks he, "has South Carolina in a canal in Ohio?" Sir, this very question is full of significance. It developes the gentleman's whole political system; and its answer expounds mine. Here we differ. I look upon a road over the Alleghany, a canal round the falls of the Ohio, or a canal or railway from the Atlantic to the western waters, as being an object large and extensive enough to be fairly said to be for the common benefit. The gentleman thinks otherwise,

and this is the key to open his construction of the powers of the government. He may well ask what interest has South Carolina in a canal in Ohio? On his system, it is true, she has no interest. On that system, Ohio and Carolina are different governments, and different countries: connected here, it is true, by some slight and ill defined bond of union, but, in all main respects, separate and diverse. On that system, Carolina has no more interest in a canal in Ohio than in Mexico. The gentleman, therefore, only follows out his own principles; he does no more than arrive at the natural conclusions of his own doctrines; he only announces the true results of that creed, which he has adopted himself, and would persuade others to adopt, when he thus declares that South Carolina has no interest in a public work in Ohio. Sir, we narrow-minded people of New England do not reason thus. Our *notion* of things is entirely different. We look upon the states not as separated, but as united. We love to dwell on that union, and on the mutual happiness which it has so much promoted, and the common renown which it has so greatly contributed to acquire. In our contemplation, Carolina and Ohio are parts of the same country; states, united under the same general government, having interests, common, associated, intermingled. In whatever is within the proper sphere of the constitutional power of this government, we look upon the states as one. We do not impose geographical limits to our patriotic feeling or regard; we do not follow rivers and mountains, and lines of latitude, to find boundaries, beyond which public improvements do not benefit us. We who come here, as agents and representatives of these narrow-minded and selfish men of New England, consider ourselves as bound to regard, with an equal eye, the good of the whole, in whatever is within our power of legislation. Sir, if a rail road or canal, beginning in South Carolina and ending in South Carolina, appeared to me to be of national importance and national magnitude, believing, as I do, that the power of government extends to the encouragement of works of that description, if I were to stand up here, and ask, what interest has Massachusetts in a rail road in South Carolina, I should not be willing to face my constituents. These same narrow-minded men would tell me, that they had sent me to act for the whole country, and that one who possessed too little comprehension, either of intellect or feeling; one who was not large enough, both in mind and in heart, to embrace the whole, was not fit to be entrusted with the interest of any part. Sir, I do not desire to enlarge the powers of the government, by unjustifiable construction; nor to exercise any not within a fair interpretation. But when it is believed that a power does exist, then it is, in my judgment, to be exercised for the general benefit of the whole. So far as respects the exercise of such a power, the states are one. It was the very object of the constitution to create unity of interests to the extent of the powers of the general government. In war and peace we are one; in commerce, one; because the authority of the general government reaches to war and peace, and to the regulation of commerce. I have never seen any more difficulty in erecting light houses on the lakes, than on the ocean; in improving the harbours of inland seas, than if they were within the ebb and flow of the tide; or of removing obstructions in the vast

streams of the West, more than in any work to facilitate commerce on the Atlantic coast. If there be any power for one, there is power also for the other; and they are all and equally for the common good of the country.

There are other objects, apparently more local, or the benefit of which is less general, towards which, nevertheless, I have concurred with others, to give aid, by donations of land. It is proposed to construct a road, in or through one of the new states, in which this government possesses large quantities of land. Have the United States no right, or, as a great and untaxed proprietor, are they under no obligation, to contribute to an object thus calculated to promote the common good of all the proprietors, themselves included? And even with respect to education, which is the extreme case, let the question be considered.—In the first place, as we have seen, it was made matter of compact with these states, that they should do their part to promote education. In the next place, our whole system of land laws proceeds on the idea that education is for the common good; because, in every division, a certain portion is uniformly reserved and appropriated for the use of schools. And, finally, have not these new states singularly strong claims, founded on the ground already stated, that the government is a great untaxed proprietor, in the ownership of the soil? It is a consideration of great importance, that, probably, there is in no part of the country, or of the world, so great call for the means of education, as in those new states; owing to the vast numbers of persons within those ages in which education and instruction are usually received, if received at all. This is the natural consequence of recency of settlement and rapid increase. The census of these states shows how great a proportion of the whole population occupies the classes between infancy and manhood. These are the wide fields, and here is the deep and quick soil for the seeds of knowledge and virtue; and this is the favored season, the very spring-time for sowing them. Let them be disseminated without stint. Let them be scattered with a bountiful, broad cast. Whatever the government can fairly do towards these objects, in my opinion, ought to be done.

These, sir, are the grounds succinctly stated, on which my votes for grants of lands for particular objects rest; while I maintain, at the same time, that it is all a common fund, for the common benefit. And reasons like these, I presume, have influenced the votes of other gentlemen from New England. Those who have a different view of the powers of the government, of course, come to different conclusions, on these, as on other questions. I observed, when speaking on this subject before, that, if we looked to any measure, whether for a road, a canal, or anything else, intended for the improvement of the West, it would be found, that, if the New England *ayes* were struck out of the lists of votes, the southern *noes* would always have rejected the measure. The truth of this has not been denied, and cannot be denied. In stating this, I thought it just to ascribe it to the constitutional scruples of the South, rather than to any other less favorable or less charitable cause. But no sooner had I done this, than the honorable gentleman asks if I reproach him and his friends with their constitutional scruples.—Sir, I reproach nobody—

I stated a fact, and gave the most respectful reason for it that occurred to me. The gentleman cannot deny the fact; he may, if he choose, disclaim the reason. It is not long since I had occasion, in presenting a petition from his own state, to account for its being entrusted to my hands, by saying, that the constitutional opinions of the gentleman and his worthy colleague, prevented them from supporting it. Sir, did I state this as matter of reproach? Far from it. Did I attempt to find any other cause than an honest one, for these scruples? Sir, I did not. It did not become me to doubt or to insinuate that the gentleman had either changed his sentiments, or that he had made up a set of constitutional opinions, accommodated to any particular combination of political occurrences. Had I done so, I should have felt, that, while I was entitled to little credit in thus questioning other people's motives, I justified the whole world in suspecting my own. But how has the gentleman returned this respect for others' opinions? His own candor and justice, how have they been exhibited towards the motives of others, while he has been at so much pains to maintain, what nobody has disputed, the purity of his own? Why, sir, he has asked *when*, and *how*, and *why*, New England votes were found going for measures favorable to the West? He has demanded to be informed whether all this did not begin *in* 1825, *and while the election of president was still pending*? Sir, to these questions retort would be justified; and it is both cogent, and at hand. Nevertheless, I will answer the inquiry, not by retort, but by facts. I will tell the gentleman *when*, and *how*, and *why*, New England has supported measures favorable to the West. I have already referred to the early history of the government—to the first acquisiti n of the lands—to the original laws for disposing of them, and for governing the territories where they lie; and have shown the influence of New England men and New England principles in all these leading measures. I should not be pardoned were I to go over that ground again. Coming to more recent times, and to measures of a less general character, I have endeavoured to prove that everything of this kind, designed for western improvement, has depended on the votes of New England; all this is true beyond the power of contradiction.

And now, sir, there are two measures to which I will refer, not so ancient as to belong to the early history of the public lands, and not so recent as to be on this side of the period when the gentleman charitably imagines a new direction may have been given to New England feeling and New England votes.—These measures, and the New England votes in support of them, may be taken as samples and specimens of all the rest.

In 1820, (observe, Mr. President, in 1820,) the people of the West besought Congress for a reduction in the price of lands. In favor of that reduction, New England, with a delegation of forty members in the other House, gave thirty-three votes, and one only against it.—The four southern states, with fifty members, gave thirty-two votes for it, and seven against it. Again, in 1821, (observe, again, sir, the time,) the law passed for the relief of the purchasers of the public lands. This was a measure of vital importance to the West, and more especially to the Southwest. It authorized

the relinquishment of contracts for lands, which had been entered into at high prices, and a reduction in other cases of not less than 37½ per cent. on the purchase money. Many millions of dollars—six or seven I believe, at least, probably much more—were relinquished by this law. On this bill, New England, with her forty members, gave more affirmative votes than the four southern states, with their fifty-two or three members.

These two are far the most important general measures respecting the public lands, which have been adopted within the last twenty years. They took place in 1820 and 1821. That is the time *when*. As to the manner *how*, the gentleman already sees that, it was by voting, in solid column, for the required relief: and lastly, as to the cause *why*, I tell the gentleman, it was because the members from New England thought the measures just and salutary; because they entertained towards the West, neither envy, hatred, or malice; because they deemed it becoming them, as just and enlightened public men, to meet the exigency which had arisen in the West, with the appropriate measure of relief; because they felt it due to their own characters, and the characters of their New England predecessors in this government, to act towards the new states in the spirit of a liberal, patronizing, magnanimous policy. So much, sir, for the cause *why;* and I hope that by this time, sir, the honorable gentleman is satisfied; if not, I do not know *when*, or *how*, or *why*, he ever will be.

Having recurred to these two important measures, in answer to the gentleman's inquiries, I must now beg permission to go back to a period yet something earlier, for the purpose of still further showing how much, or rather how little, reason there is for the gentleman's insinuation, that political hopes or fears, or party associations, were the grounds of these New England votes. And after what has been said, I hope it may be forgiven me, if I allude to some political opinions and votes of my own, of very little public importance, certainly, but which, from the time at which they were given and expressed, may pass for good witnesses on this occasion.

This government, Mr. President, from its origin to the peace of 1815, had been too much engrossed with various other important concerns, to be able to turn its thoughts inward, and look to the developement of its vast internal resources. In the early part of President Washington's administration, it was fully occupied with completing its own organization, providing for the public debt, defending the frontiers, and maintaining domestic peace. Before the termination of that administration, the fires of the French Revolution blazed forth, as from a new opened volcano, and the whole breadth of the ocean did not secure us from its effects. The smoke and the cinders reached us, though not the burning lava. Difficult and agitating questions, embarrassing to government, and dividing public opinion, sprung out of the new state of our foreign relations, and were succeeded by others, and yet again by others, equally embarrassing, and equally exciting division and discord, through the long series of twenty years; till they finally issued in the war with England. Down to the close of that war, no distinct, marked, and deliberate attention had been given, or could have been given, to the

internal condition of the country, its capacities of improvement, or the constitutional power of the government, in regard to objects connected with such improvement.

The peace, Mr. President, brought about an entirely new, and a most interesting state of things: it opened to us other prospects, and suggested other duties. We ourselves were changed, and the whole world was changed. The pacification of Europe, after June, 1815, assumed a firm and permanent aspect. The nations evidently manifested that they were disposed for peace. Some agitation of the waves might be expected, even after the storm had subsided, but the tendency was, strongly and rapidly, towards settled repose.

It so happened, sir, that I was, at that time, a member of Congress, and like others, naturally turned my attention to the contemplation of the newly altered condition of the country, and of the world. It appeared plainly enough to me, as well as to wiser and more experienced men, that the policy of the government would naturally take a start in a new direction: because, new directions would necessarily be given to the pursuits and occupations of the people. We had pushed our commerce far and fast, under the advantage of a neutral flag. But there were now no longer flags, either neutral or belligerent. The harvest of neutrality had been great, but we had gathered it all. With the peace of Europe, it was obvious there would spring up in her circle of nations, a revived and invigorated spirit of trade, and a new activity in all the business and objects of civilized life. Hereafter, our commercial gains were to be earned only by success, in a close and intense competition.—Other nations would produce for themselves, and carry for themselves, and manufacture for themselves, to the full extent of their abilities. The crops of our plains would no longer sustain European armies, nor our ships longer supply those whom war had rendered unable to supply themselves. It was obvious, that, under these circumstances, the country would begin to survey itself, and to estimate its own capacity of improvement. And this improvement—how was it to be accomplished, and who was to accomplish it? We were ten or twelve millions of people, spread over almost half a world. We were more than twenty states, some stretching along the same sea-board, some along the same line of inland frontier, and others on opposite banks of the same vast rivers. Two considerations at once presented themselves, in looking at this state of things, with great force. One was, that that great branch of improvement, which consisted in furnishing new facilities of intercourse, necessarily ran into different states, in every leading instance, and would benefit the citizens of all such states. No one state, therefore, in such cases, would assume the whole expense, nor was the cooperation of several states to be expected. Take the instance of the Delaware breakwater. It will cost several millions of money. Would Pennsylvania alone ever have constructed it? Certainly, never, while this union lasts, because it is not for her sole benefit. Would Pennsylvania, New Jersey, and Delaware, have united to accomplish it, at their joint expense? Certainly not, for the same reason. It could not be done, therefore, but by the general government. The same may be said of the large inland undertakings, except that, in them, government, instead of

bearing the whole expense, cooperates with others who bear a part. The other consideration is, that the United States have the means. They enjoy the revenues derived from commerce, and the states have no abundant and easy sources of public income. The custom-houses fill the general treasury, while the states have scanty resources, except by resort to heavy direct taxes.

Under this view of things, I thought it necessary to settle, at least for myself, some definite notions with respect to the powers of the government, in regard to internal affairs. It may not savor too much of self commendation to remark, that, with this object, I considered the constitution, its judicial construction, its cotemporaneous exposition, and the whole history of the legislation of Congress under it; and I arrived at the conclusion that government had power to accomplish sundry objects, or aid in their accomplishment, which are now commonly spoken of as INTERNAL IMPROVEMENTS. That conclusion, sir, may have been right, or it may have been wrong. I am not about to argue the grounds of it at large. I say only, that it was adopted and acted on even so early as in 1816. Yes, Mr. President, I made up my opinion, and determined on my intended course of political conduct, on these subjects, in the fourteenth Congress, in 1816. And now, Mr. President, I have further to say, that I made up these opinions, and entered on this course of political conduct, *Teucro duce.* Yes, sir, I pursued, in all this, a South Carolina track, on the doctrines of internal improvement. South Carolina, as she was then represented in the other House, set forth, in 1816, under a fresh and leading breeze, and I was among the followers. But if my leader sees new lights, and turns a sharp corner, unless I see new lights also, I keep straight on in the same path. I repeat, that leading gentlemen from South Carolina were first and foremost in behalf of the doctrines of internal improvements, when those doctrines came first to be considered and acted upon in Congress. The debate on the bank question, on the tariff of 1816, and on the direct tax, will show who was who, and what was what, at that time. The tariff of 1816, one of the plain cases of oppression and usurpation, from which, if the government does not recede, individual states may justly secede from the government, is, sir, in truth, a South Carolina tariff, supported by South Carolina votes. But for those votes, it could not have passed in the form in which it did pass; whereas, if it had depended on Massachusetts votes, it would have been lost.—Does not the honorable gentleman well know all this? There are certainly those who do, full well, know it all. I do not say this to reproach South Carolina. I only state the fact; and I think it will appear to be true, that among the earliest and boldest advocates of the tariff, as a measure of protection, and on the express ground of protection, were leading gentlemen of South Carolina in Congress. I did not then, and cannot now, understand their language in any other sense. While this tariff of 1816 was under discussion, in the House of Representatives, an honorable gentleman from Georgia, now of this House, (Mr. Forsyth,) moved to reduce the proposed duty on cotton. He failed, by four votes, South Carolina giving three votes, (enough to have turned the scale,) against his motion. The act, sir, then passed, and received on its passage

the support of a majority of the representatives of South Carolina present and voting. This act is the first, in the order of those now denounced as plain usurpations. We see it daily, in the list, by the side of those of 1824 and 1828, as a case of manifest oppression, justifying disunion. I put it home, to the honorable member from South Carolina, that his own state was not only 'art and part' in this measure, but the *causa causans*. Without her aid, this seminal principle of mischief, this root of Upas, could not have been planted. I have already said, and it is true, that this act proceeded on the ground of protection. It interfered, directly, with existing interests of great value and amount. It cut up the Calcutta cotton trade by the roots, but it passed, nevertheless, and it passed on the principle of protecting manufactures, on the principle against free trade, on the principle *opposed to that which lets us alone*. (NOTE 2.)

Such, Mr. President, were the opinions of important and leading gentlemen from South Carolina, on the subject of internal improvement in 1816. I went out of Congress the next year; and returning again in 1823—thought I found South Carolina where I had left her. I really supposed that all things remained as they were, and that the South Carolina doctrine of internal improvements would be defended by the same eloquent voices, and the same strong arms, as formerly. In the lapse of these six years, it is true, political associations had assumed a new aspect, and new divisions. A party had arisen in the South, hostile to the doctrine of internal improvements, and had vigorously attacked that doctrine. Anti-consolidation was the flag under which this party fought; and its supporters inveighed against internal improvements, much after the manner in which the honorable gentleman has now inveighed against them, as part and parcel of the system of consolidation. Whether this party arose in South Carolina herself, or in her neighbourhood, is more than I know. I think the latter. However that may have been, there were those found in South Carolina ready to make war upon it, and who did make intrepid war upon it. Names being regarded as things, in such controversies, they bestowed on the anti-improvement gentlemen the appellation of radicals. Yes, sir, the appellation of radicals, as a term of distinction, applicable and applied to those who denied the liberal doctrines of internal improvements, originated, according to the best of my recollection, somewhere between North Carolina and Georgia. Well, sir, these mischievous radicals were to be put down, and the strong arm of South Carolina was stretched out to put them down. About this time, sir, I returned to Congress. The battle with the radicals had been fought, and our South Carolina champions of the doctrines of internal improvement had nobly maintained their ground and were understood to have achieved a victory. We looked upon them as conquerors. They had driven back the enemy with discomfiture—a thing, by the way, sir, which is not always performed when it is promised. A gentleman, to whom I have already referred in this debate, had come into Congress, during my absence from it, from South Carolina, and had brought with him a high reputation for ability. He came from a school with which we had been acquainted, *et noscitur a sociis*. I hold in my hand, sir, a printed speech of this distinguished gentleman, (Mr. McDuffie,)

"ON INTERNAL IMPROVEMENTS," delivered about the period to which I now refer, and printed with a few introductory remarks upon consolidation; in which, sir, I think he quite consolidated the arguments of his opponents, the radicals, if to *crush* be to consolidate. I give you a short but substantive quotation from these remarks. He is speaking of a pamphlet, then recently published, entitled "Consolidation;" and having alluded to the question of renewing the charter of the former Bank of the United States, he says: "Moreover, in the early history of parties, and when Mr. Crawford advocated a renewal of the old charter, it was considered a federal measure; which internal improvements *never was*, as this author erroneously states. This latter measure originated in the administration of Mr. Jefferson, with the appropriation for the Cumberland road; and was first proposed, *as a system*, by Mr. Calhoun, and carried through the House of Representatives by a large majority of the republicans, including almost every one of the leading men who carried us through the late war."

So, then, internal improvement is not one of the federal heresies. One paragraph more, sir:

"The author in question, not content with denouncing as federalists, General Jackson, Mr. Adams, Mr. Calhoun, and the majority of the South Carolina delegation in Congress, modestly extends the denunciation to Mr. Monroe, and the whole republican party. Here are his words:—'During the administration of Mr. Monroe much has passed which the republican party would be glad to approve if they could!! But the principal feature, and that which has chiefly elicited these observations, is the renewal of the SYSTEM OF INTERNAL IMPROVEMENTS.' Now this measure was adopted by a vote of 115 to 86, of a republican Congress, and sanctioned by a republican president. Who, then, is this author—who assumes the high prerogative of denouncing, in the name of the republican party, the republican administration of the country? A denunciation including within its sweep *Calhoun, Lowndes, and Cheves*—men who will be regarded as the brightest ornaments of South Carolina, and the strongest pillars of the republican party, as long as the late war shall be remembered, and talents and patriotism shall be regarded as the proper objects of the admiration and gratitude of a free people!!"

Such are the opinions, sir, which were maintained by South Carolina gentlemen, in the House of Representatives, on the subject of internal improvements, when I took my seat there as a member from Massachusetts, in 1823. But this is not all. We had a bill before us, and passed it in that House, entitled "An act to procure the necessary surveys, plans, and estimates upon the subject of roads and canals." *It authorized the President to cause surveys and estimates to be made of the routes of such roads and Canals as he might deem of national importance, in a commercial or military point of view, or for the transportation of the mail*, and appropriated thirty thousand dollars, out of the treasury, to defray the expense. This act, though preliminary in its nature, covered the whole ground. It took for granted the complete power of internal improvement, as far as any of its advocates had ever contended for it. Having passed the other House, the bill came up to the Senate, and was here considered and

debated in April, 1824. The honorable member from South Carolina was a member of the Senate at that time. While the bill was under consideration here, a motion was made to add the following proviso:

"*Provided*, That nothing herein contained shall be construed to affirm *or admit* a power in Congress, on their own authority, to make roads or canals, within any of the states of the union." The yeas and nays were taken on this proviso, and the honorable member voted *in the negative!*—The proviso failed.

A motion was then made to add this proviso, viz:

"*Provided*, That the faith of the United States is hereby pledged, that no money shall ever be expended for roads or canals, except it shall be among the several states, and in the same proportion as direct taxes are laid and assessed by the provisions of the constitution."

The honorable member voted *against this proviso*, also, and it failed. The bill was then put on its passage, and the honorable member voted *for it*, and it passed, and became a law.

Now, it strikes me, sir, that there is no maintaining these votes, but upon the power of internal improvement, in its broadest sense. In truth, these bills for surveys and estimates have always been considered as test questions—they show who is for and who against internal improvement. This law itself went the whole length, and assumed the full and complete power. The gentleman's votes sustained that power, in every form in which the various propositions to amend presented it. He went for the entire and unrestrained authority, without consulting the states, and without agreeing to any proportionate distribution. And now suffer me to remind you, Mr. President, that it is this very same power, thus sanctioned, in every form, by the gentleman's own opinion, that is so plain and manifest a usurpation, that the state of South Carolina is supposed to be justified in refusing submission to any laws carrying the power into effect. Truly, sir, is not this a little too hard? May we not crave some mercy, under favor and protection of the gentleman's own authority? Admitting that a road, or a canal, must be written down flat usurpation as was ever committed, may we find no mitigation in our respect for his place, and his vote, as one that knows the law?

The tariff, which South Carolina had an efficient hand in establishing, in 1816, and this asserted power of internal improvement, advanced by her in the same year, and, as we have seen, approved and sanctioned by her representatives in 1824, these two measures are the great grounds on which she is now thought to be justified in breaking up the union, if she sees fit to break it up!

I may now safely say, I think, that we have had the authority of leading and distinguished gentlemen from South Carolina, in support of the doctrine of internal improvement. I repeat, that, up to 1824, I for one, followed South Carolina; but, when that star, in its ascension, veered off, in an unexpected direction, I relied on its light no longer.—[Here the Vice President said: Does the chair understand the gentleman from Massachusetts to say that the person now occupying the chair of the Senate has changed his opinions on the subject of internal improvements?] From nothing ever said to me,

sir, have I had reason to know of any change in the opinions of the person filling the chair of the Senate. If such change has taken place, I regret it. I speak generally of the state of South Carolina. Individuals, we know there are, who hold opinions favorable to the power. An application for its exercise, in behalf of a public work in South Carolina itself, is now pending, I believe, in the other House, presented by members from that state.

I have thus, sir, perhaps, not without some tediousness of detail, shown that if I am in error, on the subject of internal improvement, how, and in what company, I fell into that error. If I am wrong, it is apparent who misled me.

I go to other remarks of the honorable member: and I have to complain, of an entire misapprehension of what I said on the subject of the national debt, though I can hardly perceive how any one could misunderstand me. What I said was, not that I wished to put off the payment of the debt, but, on the contrary, that I had always voted for every measure for its reduction, as uniformly as the gentleman himself. He seems to claim the exclusive merit of a disposition to reduce the public charge. I do not allow it to him. As a debt, I was, I am for paying it, because it is a charge on our finances, and on the industry of the country. But I observed, that I thought I perceived a morbid fervor on that subject—an excessive anxiety to pay off the debt, not so much because it is a debt simply, as because, while it lasts, it furnishes one objection to disunion. It is a tie of common interest, while it continues. I did not impute such motives to the honorable member himself, but that there is such a feeling in existence, I have not a particle of doubt. The most I said was, that if one effect of the debt was to strengthen our union, that effect itself was not regretted by me, however much others might regret it. The gentleman has not seen how to reply to this, otherwise than by supposing me to have advanced the doctrine that a national debt is a national blessing. Others, I must hope, will find much less difficulty in understanding me. I distinctly and pointedly cautioned the honorable member not to understand me as expressing an opinion favorable to the continuance of the debt. I repeated this caution, and repeated it more than once; but it was thrown away.

On yet another point, I was still more unaccountably misunderstood. The gentleman had harangued against "consolidation." I told him, in reply, that there was one kind of consolidation to which I was attached, and that was, the CONSOLIDATION OF OUR UNION; and that this was precisely that consolidation to which I feared others were not attached. That such consolidation was the very end of the constitution—the leading object, as they had informed us themselves, which its framers had kept in view. I turned to their communication, and read their very words—"the consolidation of the union"—and expressed my devotion to this sort of consolidation. I said in terms, that I wished not, in the slightest degree, to augment the powers of this government; that my object was to preserve, not to enlarge; and that by consolidating the union, I understood no more than the strengthening of the union, and perpetuating it.—Having been thus explicit; having thus read from the printed book, the precise words which I adopted, as expressing my own sentiments, it

passes comprehension, how any man could understand me as contending for an extension of the powers of the government, or for consolidation, in that odious sense, in which it means an accumulation, in the federal government, of the powers properly belonging to the states.

I repeat, sir, that in adopting the sentiment of the framers of the constitution, I read their language audibly, and word for word; and I pointed out the distinction, just as fully as I have now done, between the consolidation of the union and that other obnoxious consolidation which I disclaimed. And yet the honorable member misunderstood me.—The gentleman had said that he wished for no fixed revenue—not a shilling. If, by a word, he could convert the capitol into gold, he would not do it. Why all this fear of revenue? Why, sir, because, as the gentleman told us, it tends to consolidation. Now, this can mean neither more nor less than that a common revenue is a common interest, and that all common interests tend to hold the union of the states together. I confess I like that tendency; if the gentleman dislikes it, he is right in deprecating a shilling's fixed revenue. So much, sir, for consolidation.

As well as I recollect the course of his remarks, the honorable gentleman next recurred to the subject of the tariff. He did not doubt the word must be of unpleasant sound to me, and proceeded, with an effort, neither new, nor attended with new success, to involve me and my votes in inconsistency and contradiction. I am happy the honorable gentleman has furnished me an opportunity of a timely remark or two on that subject. I was glad he approached it, for it is a question I enter upon without fear from any body. The strenuous toil of the gentleman has been to raise an inconsistency, between my dissent to the tariff in 1824, and my vote in 1828. It is labor lost. He pays undeserved compliment to my speech in 1824; but this is to raise me high, that my fall, as he would have it, in 1828, may be more signal. Sir, there was no fall at all. Between the ground I stood on in 1824, and that I took in 1828, there was not only no precipice, but no declivity. It was a change of position, to meet new circumstances, but on the same level. A plain tale explains the whole matter. In 1816, I had not acquiesced in the tariff, then supported by South Carolina. To some parts of it, especially, I felt and expressed great repugnance. I held the same opinions in 1821, at the meeting in Faneuil Hall, to which the gentleman has alluded. I said then, and say now, that, as an original question, the authority of Congress to exercise the revenue power, with direct reference to the protection of manufactures, is a questionable authority, far more questionable, in my judgment, than the power of internal improvements. I must confess, sir, that, in one respect, some impression has been made on my opinions lately. Mr. Madison's publication has put the power in a very strong light. He has placed it, I must acknowledge, upon grounds of construction and argument, which seem impregnable. But even if the power were doubtful, on the face of the constitution itself, it had been assumed and asserted in the first revenue law ever passed under that same constitution; and, on this ground, as a matter settled by cotemporaneous practice, I had refrained from expressing the opinion that the tariff laws tran-

scended constitutional limits, as the gentleman supposes. What I did say at Faneuil Hall, as far as I now remember, was, that this was originally matter of doubtful construction. The gentleman himself, I suppose, thinks there is no doubt about it, and that the laws are plainly against the constitution. Mr. Madison's letters, already referred to, contain, in my judgment, by far the most able exposition extant of this part of the constitution. He has satisfied me, so far as the practice of the government had left it an open question.

With a great majority of the Representatives of Massachusetts, I voted against the tariff of 1824. My reasons were then given, and I will not now repeat them. But, notwithstanding our dissent, the great states of New York, Pennsylvania, Ohio, and Kentucky, went for the bill, in almost unbroken column, and it passed. Congress and the President sanctioned it, and it became the law of the land. What, then, were we to do? Our only option was, either to fall in with this settled course of public policy, and accommodate ourselves to it as well as we could, or to embrace the South Carolina doctrine, and talk of nullifying the statute by state interference.

This last alternative did not suit our principles, and, of course, we adopted the former. In 1827, the subject came again before Congress, on a proposition favorable to wool and woollens. We looked upon the system of protection as being fixed and settled. The law of 1824 remained. It had gone into full operation, and, in regard to some objects intended by it, perhaps most of them, had produced all its expected effects. No man proposed to repeal it; no man attempted to renew the general contest on its principle. But, owing to subsequent and unforeseen occurrences, the benefit intended by it to wool and woollen fabrics had not been realized. Events, not known here when the law passed, had taken place, which defeated its object in that particular respect. A measure was accordingly brought forward to meet this precise deficiency; to remedy this particular defect. It was limited to wool and woollens. Was ever anything more reasonable? If the policy of the tariff laws had become established in principle, as the permanent policy of the government, should they not be revised and amended, and made equal, like other laws, as exigencies should arise, or justice require? Because we had doubted about adopting the system, were we to refuse to cure its manifest defects, after it become adopted, and when no one attempted its repeal? And this, sir, is the inconsistency so much bruited. I had voted against the tariff of 1824—but it passed; and in 1827 and 1828, I voted to amend it, in a point essential to the interest of my constituents. Where is the inconsistency? Could I do otherwise? Sir, does political consistency consist in always giving negative votes? Does it require of a public man to refuse to concur in amending laws, because they passed against his consent? Having voted against the tariff originally; does consistency demand that I should do all in my power to maintain an unequal tariff, burdensome to my own constituents, in many respects, favorable in none? To consistency of that sort, I lay no claim.—And there is another sort to which I lay as little—and that is, a kind of consistency by which persons feel themselves as much bound to oppose a proposition after it has become a law of the land, as before.

The bill of 1827, limited, as I have said, to the single object in which the tariff of 1824 had manifestly failed in its effect, passed the House of Representatives, but was lost here. We had then the act of 1828. I need not recur to the history of a measure so recent. Its enemies spiced it with whatsoever they thought would render it distasteful; its friends took it, drugged as it was. Vast amounts of property, many millions, had been invested in manufactures, under the inducements of the act of 1824. Events called loudly, as I thought, for further regulation to secure the degree of protection intended by that act. I was disposed to vote for such regulation, and desired nothing more; but certainly was not to be bantered out of my purpose by a threatened augmentation of duty on molasses, put into the bill for the avowed purpose of making it obnoxious. The vote may have been right or wrong, wise or unwise; but it is little less than absurd to allege against it an inconsistency with opposition to the former law.

Sir, as to the general subject of the tariff, I have little now to say. Another opportunity may be presented. I remarked the other day, that this policy did not begin with us in New England; and yet, sir, New England is charged, with vehemence, as being favorable, or charged with equal vehemence, as being unfavorable to the tariff policy, just as best suits the time, place, and occasion for making some charge against her. The credulity of the public has been put to its extreme capacity of false impression, relative to her conduct, in this particular. Through all the South, during the late contest, it was New England policy, and a New England administration, that was afflicting the country with a tariff beyond all endurance; while on the other side of the Alleghany, even the act of 1828 itself, the very sublimated essence of oppression, according to southern opinions, was pronounced to be one of those blessings, for which the West was indebted to the "generous South."

With large investments in manufacturing establishments, and many and various interests connected with and dependent on them, it is not to be expected that New England, any more than other portions of the country, will now consent to any measure, destructive or highly dangerous. The duty of the government, at the present moment, would seem to be to preserve, not to destroy; to maintain the position which it has assumed; and, for one, I shall feel it an indispensable obligation to hold it steady, as far as in my power, to that degree of protection which it has undertaken to bestow.—No more of the tariff.

Professing to be provoked, by what he chose to consider a charge made by me against South Carolina, the honorable member, Mr. President, has taken up a new crusade against New England. Leaving altogether the subject of the public lands, in which his success, perhaps, had been neither distinguished or satisfactory, and letting go, also, of the topic of the tariff, he sallied forth, in a general assault, on the opinions, politics, and parties of New England, as they have been exhibited in the last thirty years. This is natural. The "narrow policy" of the public lands had proved a legal settlement in South Carolina, and was not to be removed. The "accursed policy," of the tariff, also, had established the fact of its birth and

parentage, in the same state. No wonder, therefore, the gentleman wished to carry the war, as he expressed it, into the enemy's country. Prudently willing to quit these subjects, he was, doubtless, desirous of fastening on others, that which could not be transferred south of Mason and Dixon's line. The politics of New England became his theme; and it was in this part of his speech, I think, that he menaced me with such sore discomfiture. Discomfiture! Why, sir, when he attacks anything which I maintain, and overthrows it; when he turns the right or left of any position which I take up; when he drives me from any ground I choose to occupy; he may then talk of discomfiture, but not till that distant day. What has he done? Has he maintained his own charges? Has he proved what he alleged? Has he sustained himself in his attack on the government, and on the history of the North, in the matter of the public lands? Has he disproved a fact, refuted a proposition, weakened an argument, maintained by me? Has he come within beat of drum of any position of mine? Oh, no; but he has "carried the war into the enemy's country!" Carried the war into the enemy's country! Yes, sir, and what sort of a war has he made of it? Why, sir, he has stretched a drag-net over the whole surface of perished pamphlets, indiscreet sermons, frothy paragraphs, and fuming popular addresses; over whatever the pulpit, in its moments of alarm, the press in its heats, and parties in their extravagance, have severally thrown off in times of general excitement and violence. He has thus swept together a mass of such things as, but that they are now old and cold, the public health would have required him rather to leave in their state of dispersion. For a good long hour or two, we had the unbroken pleasure of listening to the honorable member, while he recited, with his usual grace and spirit, and with evident high gusto, speeches, pamphlets, addresses and all the *et ceteras* of the political press,—such as warm heads produce in warm times; and such as it would be "discomfiture" indeed, for any one, whose taste did not delight in that sort of reading, to be obliged to peruse. This is his war. This it is to carry the war into the enemy's country. It is in an invasion of this sort, that he flatters himself with the expectation of gaining laurels fit to adorn a senator's brow!

Mr. President, I shall not, it will, I trust, not be expected that I should, either now, or at any time, separate this farrago into parts, and answer and examine its components. I shall hardly bestow upon it all, a general remark or two. In the run of forty years, sir, under this constitution, we have experienced sundry successive violent party contests.—Party arose, indeed, with the constitution itself, and, in some form or other, has attended it through the greater part of its history. Whether any other constitution than the old articles of confederation, was desirable, was, itself, a question on which parties formed; if a new constitution were framed, what powers should be given to it, was another question; and, when it had been formed, what was, in fact, the just extent of the powers actually conferred, was a third. Parties, as we know, existed under the first administration, as distinctly marked as those which have manifested themselves at any subsequent period. The contest immediately preceding the political change in 1801, and that, again, which

existed at the commencement of the late war, are other instances of party excitement, of something more than usual strength and intensity. In all these conflicts there was, no doubt, much of violence on both and all sides. It would be impossible, if one had a fancy for such employment, to adjust the relative *quantum* of violence between these contending parties. There was enough in each, as must always be expected in popular governments. With a great deal of proper and decorous discussion, there was mingled a great deal, also, of declamation, virulence, crimination, and abuse. In regard to any party, probably, at one of the leading epochs in the history of parties, enough may be found to make out another equally inflamed exhibition, as that with which the honorable member has edified us. For myself, sir, I shall not rake among the rubbish of by-gone times, to see what I can find, or whether I cannot find something, by which I can fix a blot on the escutcheon of any state, any party, or any part of the country. General Washington's administration was steadily and zealously maintained, as we all know, by New England. It was violently opposed elsewhere. We know in what quarter he had the most earnest, constant, and persevering support, in all his great and leading measures. We know where his private and personal character were held in the highest degree of attachment and veneration; and we know, too, where his measures were opposed, his services slighted, and his character vilified. We know, or we might know, if we turned to the Journals, who expressed respect, gratitude, and regret when he retired from the chief magistracy; and who refused to express either respect, gratitude, or regret. I shall not open those Journals. Publications more abusive or scurrilous never saw the light, than were sent forth against Washington, and all his leading measures, from presses south of New England. But I shall not look them up. I employ no scavengers—no one is in attendance on me, tendering such means of retaliation; and, if there were, with an ass's load of them, with a bulk as huge as that which the gentleman himself has produced, I would not touch one of them. I see enough of the violence of our own times, to be no way anxious to rescue from forgetfulness the extravagances of times past. Besides, what is all this to the present purpose? It has nothing to do with the public lands, in regard to which the attack was begun; and it has nothing to do with those sentiments and opinions, which, I have thought, tend to disunion, and all of which the honorable member seems to have adopted himself, and undertaken to defend. New England has, at times, so argues the gentleman, held opinions as dangerous, as those which he now holds. Suppose this were so; why should *he*, therefore, abuse New England? If he finds himself countenanced by acts of hers, how is it that, while he relies on these acts, he covers, or seeks to cover, their authors with reproach? But, sir, if, in the course of forty years, there have been undue effervescences of party in New England, has the same thing happened nowhere else? Party animosity and party outrage, not in New England, but elsewhere, denounced President Washington, not only as a Federalist, but as a Tory, a British agent, a man, who, in his high office, sanctioned corruption. But does the honorable member suppose, that, if I had a tender here, who should put such an effusion

of wickedness and folly in my hand, that I would stand up and read it against the South? Parties ran into great heats again, in 1799, and 1800. What was said, sir, or rather what was not said, in those years, against John Adams, one of the signers of the Declaration of Independence, and its admitted ablest defender on the floor of Congress? If the gentleman wishes to increase his stores of party abuse and frothy violence; if he has a determined proclivity to such pursuits, there are treasures of that sort south of the Potomac, much to his taste, yet untouched—I shall not touch them.

The parties which divided the country at the commencement of the late war, were violent. But, then, there was violence on both sides, and violence in every state.—Minorities and majorities were equally violent. There was no more violence against the war in New England, than in other states; nor any more appearance of violence, except that, owing to a dense population, greater facility of assembling, and more presses, there may have been more in quantity, spoken and printed there, than in some other places. In the article of sermons, too, New England is somewhat more abundant than South Carolina; and, for that reason, the chance of finding here and there an exceptionable one, may be greater. I hope, too, there are more good ones. Opposition may have been more formidable in New England, as it embraced a larger portion of the whole pop ulation; but it was no more unrestrained in its principle, or violent in manner. The minorities dealt quite as harshly with their own state governments, as the majorities dealt with the administration here. There were presses on both sides, popular meetings on both sides, ay, and pulpits on both sides, also. The gentleman's purveyors have only catered for him among the productions of one side. I certainly shall not supply the deficiency by furnishing samples of the other. I leave to him, and to them, the whole concern.

It is enough for me to say, that if, in any part of this their grateful occupation; if, in all their researches, they find anything in the history of Massachusetts, or New England, or in the proceedings of any legislative, or other public body, disloyal to the union, speaking slightly of its value, proposing to break it up, or recommending non-intercourse with neighbouring states, on account of difference of political opinion, then, sir, I give them all up to the honorable gentleman's unrestrained rebuke; expecting, however, that he will extend his buffetings, in like manner *to all similar proceedings, wherever else found.*

The gentleman, sir, has spoken at large, of former parties, now no longer in being, by their received appellations, and has undertaken to instruct us, not only in the knowledge of their principles, but of their respective pedigrees also. He has ascended to the origin, and run out their genealogies. With most exemplary modesty, he speaks of the party to which he professes to have belonged himself, as the true Pure, the only honest, patriotic party, derived by regular descent, from father to son, from the time of the virtuous Romans! Spreading before us the *family tree* of political parties, he takes especial care to show himself, snugly perched on a popular bough! He is wakeful to the expediency of adopting such rules of descent, as shall bring him in, in exclusion of others. as an heir to the inheritance of

all public virtue, and all true political principle. His party, and his opinions, are sure to be orthodox; heterodoxy is confined to his opponents. He spoke, sir, of the federalists, and I thought I saw some eyes begin to open and stare a little, when he ventured on that ground. I expected he would draw his sketches rather lightly, when he looked on the circle round him, and, especially, if he should cast his thoughts to the high places, out of the Senate. Nevertheless, he went back to Rome, *ad annum urbe condita*, and found the fathers of the federalists, in the primeval aristocrats of that renowned empire! He traced the flow of federal blood down, through successive ages and centuries, till he brought it into the veins of the American tories, (of whom, by the way, there were twenty in the Carolinas, for one in Massachusetts.) From the tories, he followed it to the federalists; and, as the federal party was broken up, and there was no possibility of transmitting it further on this side the Atlantic, he seems to have discovered that it has gone off, collaterally, though against all the canons of descent, into the Ultras of France, and finally become extinguished, like exploded gas, among the adherents of Don Miguel! This, sir, is an abstract of the gentleman's history of federalism. I am not about to controvert it.—It is not, at present, worth the pains of refutation; because, sir, if at this day, any one feels the sin of federalism lying heavily on his conscience, he can easily procure remission. He may even obtain an indulgence, if he be desirous of repeating the same transgression. It is an affair of no difficulty to get into this same right line of patriotic descent. A man, now-a-days, is at liberty to choose his political parentage. He may elect his own father. Federalist, or not, he may, if he choose, claim to belong to the favored stock, and his claim will be allowed. He may carry back his pretensions just as far as the honorable gentleman himself; nay, he may make himself out the honorable gentleman's cousin, and prove, satisfactorily, that he is descended from the same political great grandfather. All this is allowable.—We all know a process, sir, by which the whole Essex Junto could, in one hour, be all washed white from their ancient federalism, and come out, every one of them, an original democrat, dyed in the wool! Some of them have actually undergone the operation, and they say it is quite easy. The only inconvenience it occasions, as they tell us, is a slight tendency of the blood to the face, a soft suffusion, which, however, is very transient, since nothing is said by those whom they join, calculated to deepen the red on the cheek, but a prudent silence observed, in regard to all the past. Indeed, sir, some smiles of approbation have been bestowed, and some crumbs of comfort have fallen, not a thousand miles from the door of the Hartford Convention itself. And if the author of the ordinance of 1787 possessed the other requisite qualifications, there is no knowing, notwithstanding his federalism, to what heights of favor he might not yet attain.

Mr. President, in carrying his warfare, such as it was, into New England, the honorable gentleman all along professes to be acting on the defensive. He elects to consider me as having assailed South Carolina, and insists that he comes forth only as her champion, and in her defence. Sir, I do not admit that I made any attack whatev-

er on South Carolina. Nothing like it. The honorable member, in his first speech, expressed opinions, in regard to revenue and some other topics, which I heard both with pain and with surprise. I told the gentleman I was aware that such sentiments were entertained *out* of the government, but had not expected to find them advanced in it; that I knew there were persons in the South who speak of our union with indifference, or doubt, taking pains to magnify its evils, and to say nothing of its benefits; that the honorable member himself, I was sure, could never be one of these; and I regretted the expression of such opinions as he had avowed, because I thought their obvious tendency was to encourage feelings of disrespect to the union, and to weaken its connexion. This, sir, is the sum and substance of all I said on the subject. And this constitutes the attack, which called on the chivalry of the gentleman, in his own opinion, to harry us with such a foray, among the party pamphlets and party proceedings of Massachusetts! If he means that I spoke with dissatisfaction or disrespect of the ebullitions of individuals in South Carolina, it is true. But if he means that I had assailed the character of the state, her honor, or patriotism; that I had reflected on her history or her conduct, he had not the slightest ground for any such assumption. I did not even refer, I think, in my observations, to any collection of individuals. I said nothing of the recent conventions. I spoke in the most guarded and careful manner, and only expressed my regret for the publication of opinions which I presumed the honorable member disapproved as much as myself. In this, it seems, I was mistaken. I do not remember that the gentleman has disclaimed any sentiment, or any opinion, of a supposed anti-union tendency, which on all, or any of the recent occasions has been expressed.—The whole drift of his speech has been rather to prove, that, in divers times and manners, sentiments equally liable to my objection have been promulged in New England.—And one would suppose that his object, in this reference to Massachusetts, was to find a precedent to justify proceedings in the South, were it not for the reproach and contumely with which he labors, all along, to load these, his own chosen precedents. By way of defending South Carolina from what he chooses to think an attack on her, he first quotes the example of Massachusetts, and then denounces that example in good set terms. This two-fold purpose, not very consistent with itself, one would think, was exhibited more than once in the course of his speech. He referred, for instance, to the Hartford Convention. Did he do this for authority, or for a topic of reproach? Apparently for both: for he told us that he should find no fault with the mere fact of holding such a convention, and considering and discussing such questions as he supposes were then and there discussed; but what rendered it obnoxious was the time it was holden, and the circumstances of the country, then existing. We were in a war, he said, and the country needed all our aid—the hand of government required to be strengthened, not weakened—and patriotism should have postponed such proceedings to another day. The thing itself, then, is a precedent; the time and manner of it, only, a subject of censure. Now, sir, I go much further, on this point, than the honorable member. Supposing, as the gen-

tleman seems to, that the Hartford Convention assembled for any such purpose as breaking up the union, because they thought unconstitutional laws had been passed, or to consult on that subject, or *to calculate the value of the union;* supposing this to be their purpose, or any part of it, then, I say the meeting itself was disloyal, and was obnoxious to censure, whether held in time of peace or time of war, or under whatever circumstances. The material question is the *object.* Is dissolution the *object?* If it be, external circumstances may make it a more or less aggravated case, but cannot affect the principle. I do not hold, therefore, sir, that the Hartford Convention was pardonable, even to the extent of the gentleman's admission, if its objects were really such as have been imputed to it. Sir, there never was a time, under any degree of excitement, in which the Hartford Convention, or any other convention, could maintain itself one moment in New England, if assembled for any such purpose as the gentleman says would have been an allowable purpose. To hold conventions to decide constitutional law!—to try the binding validity of statutes, by votes in a convention! Sir, the Hartford Convention, I presume, would not desire that the honorable gentleman should be their defender or advocate, if he puts their case upon such untenable and extravagant grounds.

Then, sir, the gentleman has no fault to find with these recently promulgated South Carolina opinions. And, certainly, he need have none; for his own sentiments as now advanced, and advanced on reflection, as far as I have been able to comprehend them, go the full length of all these opinions. I propose, sir, to say something on these, and to consider how far they are just and constitutional. Before doing that, however, let me observe, that the eulogium pronounced on the character of the state of South Carolina, by the honorable gentleman, for her revolutionary and other merits, meets my hearty concurrence. I shall not acknowledge that the honorable member goes before me in regard for whatever of distinguished talent, or distinguished character, South Carolina has produced. I claim part of the honor, I partake in the pride, of her great names. I claim them for countrymen, one and all. The Laurenses, the Rutledges, the Pinckneys, the Sumpters, the Marions—Americans, all—whose fame is no more to be hemmed in by state lines, than their talents and patriotism were capable of being circumscribed within the same narrow limits. In their day and generation, they served and honored the country, and the whole country; and their renown is of the treasures of the whole country. Him, whose honored name the gentleman himself bears—does he esteem me less capable of gratitude for his patriotism, or sympathy for his sufferings, than if his eyes had first opened upon the light of Massachusetts, instead of South Carolina? Sir, does he suppose it in his power to exhibit a Carolina name, so bright, as to produce envy in my bosom? No, sir, increased gratification and delight, rather. I thank God, that, if I am gifted with little of the spirit which is able to raise mortals to the skies, I have yet none, as I trust, of that other spirit, which would drag angels down. When I shall be found, sir, in my place here, in the Senate, or elsewhere, to sneer at public merit, because it happens to spring up beyond the little limits of my own state, or neighbourhood; when

I refuse, for any such cause, or for any cause, the homage due to American talent, to elevated patriotism, to sincere devotion to liberty and the country; or, if I see an uncommon endowment of Heaven—if I see extraordinary capacity and virtue in any son of the South—and if, moved by local prejudice, or gangrened by state jealousy, I get up here to abate the tithe of a hair from his just character and just fame, may my tongue cleave to the roof of my mouth!

Sir, let me recur to pleasing recollections—let me indulge in refreshing remembrance of the past—let me remind you that in early times, no states cherished greater harmony, both of principle and feeling, than Massachusetts and South Carolina. Would to God that harmony might again return! Shoulder to shoulder they went through the revolution—hand in hand they stood round the administration of Washington, and felt his own great arm lean on them for support. Unkind feeling, if it exist, alienation and distrust, are the growth, unnatural to such soils, of false principles since sown. They are weeds, the seeds of which that same great arm never scattered.

Mr. President, I shall enter on no encomium upon Massachusetts—she needs none. There she is—behold her, and judge for yourselves. There is her history: the world knows it by heart. The past, at least, is secure. There is Boston, and Concord, and Lexington, and Bunker Hill—and there they will remain forever. The bones of her sons, falling in the great struggle for Independence, now lie mingled with the soil of every state, from New England to Georgia; and there they will lie forever. And sir, where American Liberty raised its first voice; and where its youth was nurtured and sustained, there it still lives, in the strength of its manhood and full of its original spirit. If discord and disunion shall wound it—if party strife and blind ambition shall hawk at and tear it—if folly and madness—if uneasiness, under salutary and necessary restraint—shall succeed to separate it from that union, by which alone its existence is made sure, it will stand, in the end, by the side of that cradle in which its infancy was rocked: it will stretch forth its arm with whatever of vigor it may still retain, over the friends who gather round it; and it will fall at last, if fall it must, amidst the proudest monuments of its own glory, and on the very spot of its origin.

There yet remains to be performed, Mr. President, by far the most grave and important duty, which I feel to be devolved on me, by this occasion. It is to state, and to defend, what I conceive to be the true principles of the constitution under which we are here assembled. I might well have desired that so weighty a task should have fallen into other and abler hands. I could have wished that it should have been executed by those, whose character and experience give weight and influence to their opinions, such as cannot possibly belong to mine. But, sir, I have met the occasion, not sought it: and I shall proceed to state my own sentiments, without challenging for them any particular regard, with studied plainness, and as much precision as possible.

I understand the honorable gentleman from South Carolina to maintain, that it is a right of the state legislatures to interfere, when-

ever, in their judgment, this government transcends its constitutional limits, and to arrest the operation of its laws.

I understand him to maintain this right; as a right existing *under* the constitution, not as a right to overthrow it, on the ground of extreme necessity, such as would justify violent revolution.

I understand him to maintain an authority, on the part of the states, thus to interfere, for the purpose of correcting the exercise of power by the general government, of checking it, and of compelling it to conform to their opinion of the extent of its powers.

I understand him to maintain, that the ultimate power of judging of the constitutional extent of its own authority, is not lodged exclusively in the general government, or any branch of it; but that, on the contrary, the states may lawfully decide for themselves, and each state for itself, whether, in a given case, the act of the general government transcends its power.

I understand him to insist, that if the exigency of the case, in the opinion of any state government require it, such state government may, by its own sovereign authority, annul an act of the general government, which it deems plainly and palpably unconstitutional.

This is the sum of what I understand from him, to be the South Carolina doctrine; and the doctrine which he maintains. I propose to consider it, and compare it with the constitution. Allow me to say, as a preliminary remark, that I call this the South Carolina doctrine, only because the gentleman himself has so denominated it. I do not feel at liberty to say that South Carolina, as a state, has ever advanced these sentiments. I hope she has not, and never may. That a great majority of her people are opposed to the tariff laws, is doubtless true. That a majority, somewhat less than that just mentioned, conscientiously believe these laws unconstitutional, may probably also be true. But, that any majority holds to the right of direct state interference, at state discretion, the right of nullifying acts of Congress, by acts of state legislation, is more than I know, and what I shall be slow to believe.

That there are individuals, besides the honorable gentleman, who do maintain these opinions, is quite certain. I recollect the recent expression of a sentiment, which circumstances attending its utterance and publication, justify us in supposing was not unpremeditated. "The sovereignty of the state—never to be controlled, construed, or decided on, but by her own feelings of honorable justice."

[Mr. Hayne here rose, and said, that for the purpose of being clearly understood, he would state, that his proposition was in the words of the Virginia resolution, as follows:

"That this assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no farther valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate palpable and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound to interpose, for arresting the progress of the evil, and for maintaining,

within their respective limits, the authorities, rights, and liberties appertaining to them."]

Mr. WEBSTER resumed:

I am quite aware, Mr. President, of the existence of the resolution which the gentleman read, and has now repeated, and that he relies on it as his authority. I know the source, too, from which it is understood to have proceeded. I need not say that I have much respect for the constitutional opinions of Mr. Madison; they would weigh greatly with me, always. But, before the authority of his opinion be vouched for the gentleman's proposition, it will be proper to consider what is the fair interpretation of that resolution, to which Mr. Madison is understood to have given his sanction. As the gentleman construes it, it is an authority for him. Possibly, he may not have adopted the right construction. That resolution declares, that, *in the case of the dangerous exercise of powers not granted by the general government, the states may interpose to arrest the progress of the evil.* But how interpose, and what does this declaration purport? Does it mean no more, than that there may be extreme cases, in which the people, in any mode of assembling, may resist usurpation, and relieve themselves from a tyrannical government? No one will deny this. Such resistance is not only acknowledged to be just in America, but in England also. Blackstone admits as much, in the theory, and practice, too, of the English constitution. We, sir, who oppose the Carolina doctrine, do not deny that the people may, if they choose, throw off any government, when it becomes oppressive and intolerable, and erect a better in its stead. We all know that civil institutions are established for the public benefit, and that when they cease to answer the ends of their existence, they may be changed. But I do not understand the doctrine now contended for to be that, which, for the sake of distinctness, we may call the right of revolution. I understand the gentleman to maintain, that, without revolution, without civil commotion, without rebellion, a remedy for supposed abuse and transgression of the powers of the general government, lies in a direct appeal to the interference of the state governments. [Mr. HAYNE here rose: He did not contend, he said, for the mere right of revolution, but for the right of constitutional resistance. What he maintained, was, that in case of a plain, palpable violation of the constitution, by the general government, a state may interpose; and that this interposition is constitutional.]

Mr. WEBSTER resumed: So, sir, I understood the gentleman, and am happy to find that I did not misunderstand him. What he contends for, is, that it is constitutional to interrupt the administration of the constitution itself, in the hands of those who are chosen and sworn to administer it, by the direct interference, in form of law, of the states, in virtue of their sovereign capacity. The inherent right in the people to reform their government I do not deny: and they have another right, and that is, to resist unconstitutional laws, without overturning the government. It is no doctrine of mine, that unconstitutional laws bind the people. The great question is, *whose prerogative is it to decide on the constitutionality, or unconstitutionality of the laws?* On that, the main debate hinges. The proposition, that, in case of a supposed violation of the constitution by Congress,

the states have a constitutional right to interfere, and annul the law of Congress, is the proposition of the gentleman: I do not admit it If the gentleman had intended no more than to assert the right of revolution, for justifiable cause, he would have said only what all agree to. But I cannot conceive that there can be a middle course, between submission to the laws, when regularly pronounced constitutional, on the one hand, and open resistance, which is revolution, or rebellion, on the other. I say, the right of a state to annul a law of Congress, cannot be maintained, but on the ground of the unalienable right of man to resist oppression; that is to say, upon the ground of revolution. I admit that there is an ultimate violent remedy, above the constitution, and in defiance of the constitution, which may be resorted to, when a revolution is to be justified. But I do not admit that, under the constitution, and in conformity with it, there is any mode in which a state government, as a member of the union, can interfere and stop the progress of the general government, by force of her own laws, under any circumstances whatever.

This leads us to inquire into the origin of this government, and the source of its power. Whose agent is it? Is it the creature of the state legislatures, or the creature of the people? If the government of the United States be the agent of the state governments, than they may control it, provided they can agree in the manner of controlling it; if it be the agent of the people, then the people alone can control it, restrain it, modify, or reform it. It is observable enough, that the doctrine for which the honorable gentleman contends, leads him to the necessity of maintaining, not only that this general government is the creature of the states, but that it is the creature of each of the states severally; so that each may assert the power, for itself, of determining whether it acts within the limits of its authority. It is the servant of four and twenty masters, of different wills and different purposes, and yet bound to obey all. This absurdity (for it seems no less) arises from a misconception as to the origin of this government and its true character. It is, sir, the people's constitution, the people's government; made for the people; made by the people; and answerable to the people. The people of the United States have declared that this constitution shall be the supreme law. We must either admit the proposition, or dispute their authority. The states are, unquestionably, sovereign, so far as their sovereignty is not affected by this supreme law. But the state legislatures, as political bodies, however sovereign, are yet not sovereign over the people. So far as the people have given power to the general government, so far the grant is unquestionably good, and the government holds of the people, and not of the state governments. We are all agents of the same supreme power, the people.—The general government and the state governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted and the other general and residuary. The national government possesses those powers which it can be shown the people have conferred on it, and no more. All the rest belongs to the state governments or to the people themselves. So far as the people have restrained state sovereignty, by the expression of their will, in the constitution of the United States, so far, it

must be admitted, state sovereignty is effectually controlled. I do not contend that it is, or ought to be controlled farther. The sentiment to which I have referred, propounds that state sovereignty is only to be controlled by its own "feeling of justice;" that is to say, it is not to be controlled at all; for one who is to follow his own feelings is under no legal control.—Now, however men may think this ought to be, the fact is, that the people of the United States have chosen to impose control on state sovereignties. There are those, doubtless, who wish they had been left without restraint; but the constitution has ordered the matter differently. To make war, for instance, is an exercise of sovereignty; but the constitution declares that no state shall make war. To coin money is another exercise of sovereign power; but no state is at liberty to coin money. Again, the constitution says that no sovereign state shall be so sovereign as to make a treaty. These prohibitions, it must be confessed, are a control on the state sovereignty of South Carolina, as well as of the other states, which does not arise "from her own feelings of honorable justice." Such an opinion, therefore, is in defiance of the plainest provisions of the constitution.

There are other proceedings of public bodies which have already been alluded to, and to which I refer again for the purpose of ascertaining, more fully, what is the length and breadth of that doctrine, denominated the Carolina doctrine, which the honorable member has now stood up on this floor to maintain. In one of them I find it resolved, that "the tariff of 1828, and every other tariff designed to promote one branch of industry at the expense of others, is contrary to the meaning and intention of the Federal compact; and, as such, a dangerous, palpable, and deliberate usurpation of power, by a determined majority, wielding the general government beyond the limits of its delegated powers, as calls upon the states which compose the suffering minority, in their sovereign capacity, to exercise the powers which, as sovereigns, necessarily devolve upon them, when their compact is violated."

Observe, sir, that this resolution holds the tariff of 1828, and every other tariff, designed to promote one branch of industry at the expense of another, to be such a dangerous, palpable, and deliberate usurpation of power, as calls upon the states, in their sovereign capacity, to interfere by their own authority. This denunciation, Mr. President, you will please to observe, includes our old tariff of 1816, as well as all others; because that was established to promote the interest of the manufactures of cotton, to the manifest and admitted injury of the Calcutta cotton trade. Observe, again, that all the qualifications are here rehearsed and charged upon the tariff, which are necessary to bring the case within the gentleman's proposition. The tariff is a usurpation; it is a dangerous usurpation; it is a palpable usurpation; it is a deliberate usurpation. It is such a usurpation, therefore, as calls upon the states to exercise their right of interference. Here is a case, then, within the gentleman's principles, and all his qualifications of his principles. It is a case for action. The constitution is plainly, dangerously, palpably, and deliberately violated; and the states must interpose their own authority to arrest the law. Let us suppose the state of South Carolina to express this

same opinion, by the voice of her legislature. That would be very imposing; but what then? Is the voice of one state conclusive? It so happens that at the very moment when South Carolina resolves that the tariff laws are unconstitutional, Pennsylvania and Kentucky, resolve exactly the reverse. *They* hold those laws to be both highly proper and strictly constitutional. And now, sir, how does the honorable member propose to deal with this case? How does he relieve us from this difficulty, upon any principle of his? His construction gets us into it; how does he propose to get us out?

In Carolina, the tariff is a palpable, deliberate usurpation; Carolina, therefore, may *nullify* it, and refuse to pay the duties. In Pennsylvania, it is both clearly constitutional, and highly expedient; and there, the duties are to be paid. And yet, we live under a government of uniform laws, and under a constitution, too, which contains an express provision, as it happens, that all duties shall be equal in all the states. Does not this approach absurdity?

If there be no power to settle such questions, independent of either of the states, is not the whole union a rope of sand? Are we not thrown back again, precisely, upon the old confederation?

It is too plain to be argued. Four-and-twenty interpreters of constitutional law, each with a power to decide for itself, and none with authority to bind anybody else, and this constitutional law the only bond of their union! What is such a state of things, but a mere connexion during pleasure, or, to use the phraseology of the times, *during feeling*? And that feeling, too, not the feeling of the people, who established the constitution, but the feeling of the state governments.

In another of the South Carolina addresses, having premised that the crisis requires "all the concentrated energy of passion," an attitude of open resistance to the laws of the union is advised. Open resistance to the laws, then, is the constitutional remedy, the conservative power of the state, which the South Carolina doctrines teach for the redress of political evils, real or imaginary. And its authors further say, that, appealing with confidence to the constitution itself, to justify their opinions, they cannot consent to try their accuracy by the courts of justice. In one sense, indeed, sir, this is assuming an attitude of open resistance in favor of liberty. But what sort of liberty? The liberty of establishing their own opinions, in defiance of the opinions of all others; the liberty of judging and of deciding exclusively themselves, in a matter in which others have as much right to judge and decide as they; the liberty of placing their own opinions above the judgment of all others, above the laws, and above the constitution. This is their liberty, and this is the fair result of the proposition contended for by the honorable gentleman. Or it may be more properly said, it is identical with it, rather than a result from it.

In the same publication, we find the following: "Previously to our revolution, when the arm of oppression was stretched over New England, where did our northern brethren meet with a braver sympathy than that which sprung from the bosoms of Carolinians. *We had no extortion, no oppression, no collision with the king's ministers, no navigation interests springing up, in envious rivalry of England.*"

This seems extraordinary language. South Carolina no collision with the king's ministers in 1775! No extortion! No oppression! But, sir, it is also most significant language. Does any man doubt the purpose for which it was penned? Can any one fail to see that it was designed to raise in the reader's mind the question, whether, *at this time*—that is to say, in 1828—South Carolina has any collision with the king's ministers, any oppression, or extortion, to fear from England? Whether, in short, England is not as naturally the friend of South Carolina, as New England, with her navigation interests springing up in envious rivalry of England?

Is it not strange, sir, that an intelligent man in South Carolina, in 1828, should thus labor to prove, that, in 1775, there was no hostility, no cause of war, between South Carolina and England? That she had no occasion, in reference to her own interest, or from a regard to her own welfare, to take up arms in the revolutionary contest? Can any one account for the expression of such strange sentiments, and their circulation through the state, otherwise than by supposing the object to be, what I have already intimated, to raise the question, if they had no "*collision*" (mark the expression) with the ministers of king George the Third, in 1775, what *collision* have they, in 1828, with the ministers of king George the Fourth? What is there now, in the existing state of things, to separate Carolina from *Old*, more, or rather, than from *New* England?

Resolutions, sir, have been recently passed by the legislature of South Carolina. I need not refer to them; they go no farther than the honorable gentleman himself has gone—and, I hope, not so far. I content myself, therefore, with debating the matter with him.

And now, sir, what I have first to say on this subject is, that, at no time, and under no circumstances, has New England, or any state in New England, or any respectable body of persons in New England, or any public man of standing in New England, put forth such a doctrine as this Carolina doctrine.

The gentleman has found no case, he can find none, to support his own opinions by New England authority. New England has studied the constitution in other schools, and under other teachers. She looks upon it with other regards, and deems more highly and reverently both of its just authority, and its utility and excellence. The history of her legislative proceedings may be traced—the ephemeral effusions of temporary bodies, called together by the excitement of the occasion, may be hunted up—they have been hunted up. The opinions and votes of her public men, in and out of Congress, may be explored—it will all be in vain. The Carolina doctrine can derive from her neither countenance nor support. She rejects it now; she always did reject it; and till she loses her senses, she always will reject it. The honorable member has referred to expressions, on the subject of the embargo law, made in this place, by an honorable and venerable gentleman, (Mr. Hillhouse,) now favoring us with his presence. He quotes that distinguished senator as saying, that, in his judgment, the embargo law was unconstitutional, and that, therefore, in his opinion, the people were not bound to obey it. That, sir, is perfectly constitutional language. An unconstitutional law is not binding; *but then it does not rest with a resolution or a law of a*

state legislature to decide whether an act of Congress be, or be not, constitutional. An unconstitutional act of Congress would not bind the people of this district, although they have no legislature to interfere in their behalf; and, on the other hand, a constitutional law of Congress does bind the citizens of every state, although all their legislatures should undertake to annul it by act or resolution. The venerable Connecticut senator is a constitutional lawyer, of sound principles, and enlarged knowledge; a statesman practised and experienced, bred in the company of Washington, and holding just views upon the nature of our governments. He believed the embargo unconstitutional, and so did others; but what then? Who, did he suppose, was to decide that question? The state legislatures? Certainly not. No such sentiment ever escaped his lips. Let us follow up, sir, this New England opposition to the embargo laws; let us trace it, till we discern the principle, which controlled and governed New England, throughout the whole course of that opposition. We shall then see what similarity there is between the New England school of constitutional opinions, and this modern Carolina school. The gentleman, I think, read a petition from some single individual, addressed to the legislature of Massachusetts, asserting the Carolina doctrine—that is, the right of state interference to arrest the laws of the union. The fate of that petition shows the sentiment of the legislature. It met no favor. The opinions of Massachusetts were otherwise. They had been expressed, in 1798, in answer to the resolutions of Virginia, and she did not depart from them, nor bend them to the times. Misgoverned, wronged, oppressed as she felt herself to be, she still held fast her integrity to the union. The gentleman may find in her proceedings much evidence of dissatisfaction with the measures of government, and great and deep dislike to the embargo; all this makes the case so much the stronger for her; for, notwithstanding all this dissatisfaction and dislike, she claimed no right, still, to sever asunder the bonds of the union. There was heat, and there was anger, in her political feeling—be it so—her heat or her anger did not, nevertheless, betray her into infidelity to the government. The gentleman labors to prove that she disliked the embargo, as much as South Carolina dislikes the tariff, and expressed her dislike as strongly. Be it so; *but did she propose the Carolina remedy?—did she threaten to interfere, by state authority, to annul the laws of the union?* That is the question for the gentleman's consideration.

No doubt, sir, a great majority of the people of New England conscientiously believed the embargo law of 1807 unconstitutional; as conscientiously, certainly, as the people of South Carolina hold that opinion of the tariff. They reasoned thus: Congress has power to regulate commerce; but here is a law, they said, stopping all commerce, and stopping it indefinitely. The law is perpetual; that is, it is not limited in point of time, and must, of course, continue, until it shall be repealed by some other law. It is as perpetual therefore, as the law against treason or murder. Now, is this regulating commerce, or destroying it? Is it guiding, controlling, giving the rule to commerce, as a subsisting thing; or is it putting an end to it altogether? Nothing is more certain, than that a majority in New England, deemed this law a violation of the constitu-

tion. The very case required by the gentleman to justify state interference, had then arisen. Massachusetts believed this law to be "*a deliberate, palpable, and dangerous exercise of a power, not granted by the constitution.*" Deliberate it was, for it was long continued; palpable, she thought it, as no words in the constitution gave the power, and only a construction, in her opinion most violent, raised it; dangerous it was, since it threatened utter ruin to her most important interests. Here, then, was a Carolina case. How did Massachusetts deal with it? It was, as she thought, a plain, manifest, palpable violation of the constitution, and it brought ruin to her doors. Thousands of families, and hundreds of thousands of individuals, were beggared by it. While she saw and felt all this, she saw and felt, also, that, as a measure of national policy, it was perfectly futile; that the country was no way benefited by that which caused so much individual distress; that it was efficient only for the production of evil, and all that evil inflicted on ourselves. In such a case, under such circumstances, how did Massachusetts demean herself? Sir, she remonstrated, she memorialized, she addressed herself to the general government, not exactly "with the concentrated energy of passion," but with her own strong sense, and the energy of sober conviction. But she did not interpose the arm of her own power to arrest the law, and break the embargo. Far from it. Her principles bound her to two things; and she followed her principles, lead where they might. First, to submit to every constitutional law of Congress, and, secondly, if the constitutional validity of the law be doubted, to refer that question to the decision of the proper tribunals. The first principle is vain and ineffectual without the second. A majority of us in New England believed the embargo law unconstitutional; but the great question was, and always will be, in such cases, who is to decide this?—Who is to judge between the people and the government? And, sir, it is quite plain, that the constitution of the United States confers on the government itself, to be exercised by its appropriate department, and under its own responsibility to the people, this power of deciding ultimately and conclusively, upon the just extent of its own authority. If this had not been done we should not have advanced a single step beyond the old confederation.

Being fully of opinion that the embargo law was unconstitutional, the people of New England were yet equally clear in the opinion—it was a matter they did doubt upon—that the question, after all, must be decided by the judicial tribunals of the United States. Before those tribunals, therefore, they brought the question. Under the provisions of the law, they had given bonds, to millions in amount, and which were alleged to be forfeited. They suffered the bonds to be sued, and thus raised the question. In the oldfashioned way of settling disputes, they went to law. The case came to hearing, and solemn argument; and he who espoused their cause, and stood up for them against the validity of the embargo act, was none other than that great man, of whom the gentleman has made honorable mention, SAMUEL DEXTER. He was then, sir, in the fulness of his knowledge, and the maturity of his strength. He had retired from long and distinguished public service here, to the renewed pursuit of pro-

fessional duties; carrying with him all that enlargement and expansion, all the new strength and force, which an acquaintance with the more general subjects discussed in the national councils, is capable of adding to professional attainment, in a mind of true greatness and comprehension. He was a lawyer, and he was also a statesman. He had studied the constitution, when he filled public station, that he might defend it; he had examined its principles that he might maintain them.—More than all men, or at least as much as any man, he was attached to the general government and to the union of the states. His feelings and opinions all ran in that direction. A question of constitutional law, too, was, of all subjects, that one which was best suited to his talents and learning.—Aloof from technicality, and unfettered by artificial rule, such a question gave opportunity for that deep and clear analysis, that mighty grasp of principle, which so much distinguished his higher efforts. His very statement was argument; his inference seemed demonstration. The earnestness of his own conviction, wrought conviction in others. One was convinced, and believed, and assented, because it was gratifying, delightful to think, and feel, and believe, in unison with an intellect of such evident superiority.

Mr. Dexter, sir, such as I have described him, argued the New England cause. He put into his effort his whole heart, as well as all the powers of his understanding; for he had avowed, in the most public manner, his entire concurrence with his neighbours, on the point in dispute. He argued the cause, it was lost, and New England submitted. The established tribunals pronounced the law constitutional, and New England acquiesced. Now, sir, is not this the exact opposite of the doctrine of the gentleman from South Carolina? According to him, instead of referring to the judicial tribunals, we should have broken up the embargo by laws of our own; we should have repealed it, *quoad* New England; for we had a strong, palpable, and oppressive case. Sir, we believed the embargo unconstitutional; but still that was matter of opinion, and who was to decide it? We thought it a clear case; but, nevertheless, we did not take the law into our own hands, *because we did not wish to bring about a revolution, nor to break up the union:* for I maintain, that, between sub mission to the decision of the constituted tribunals, and revolution, or disunion, there is no middle ground—there is no ambiguous condition, half allegiance, and half rebellion. And, sir, how futile, how very futile it is, to admit the right of state inteference, and then attempt to save it from the character of unlawful resistance, by adding terms of qualification to the causes, and occasions, leaving all these qualifications, like the case itself, in the discretion of the state governments. It must be a clear case, it is said, a deliberate case; a palpable case; a dangerous case. But then the state is still left at liberty to decide for herself, what is clear, what is deliberate, what is palpable, what is dangerous. Do adjectives and epithets avail anything? Sir, the human mind is so constituted, that the merits of both sides of a controversy appear very clear, and very palpable, to those who respectively espouse them; and both sides usually grow clearer as the controversy advances. South Carolina sees unconstitutionality in the tariff; she sees oppression there, also; and she sees danger. Pennsyl-

vania, with a vision not less sharp, looks at the same tariff, and sees no such thing in it—she sees it all constitutional, all useful, all safe. The faith of South Carolina is strengthened by opposition, and she now not only sees, but *Resolves*, that the tariff is palpably unconstitutional, oppressive and dangerous: but Pennsylvania, not to be behind her neighbours, and equally willing to strengthen her own faith by a confident asseveration, *Resolves*, also, and gives to every warm affirmative of South Carolina, a plain, downright, Pennsylvania negative. South Carolina, to show the strength and unity of her opinion, brings her assembly to a unanimity, within seven voices; Pennsylvania, not to be outdone in this respect more than others, reduces her dissentient fraction to a single vote. Now, sir, again, I ask the gentleman, what is to be done? Are these states both right? Is he bound to consider them both right? If not, which is in the wrong? or rather, which has the best right to decide? And if he, and if I, are not to know what the constitution means, and what it is, till those two state legislatures, and the twenty-two others, shall agree in its construction, what have we sworn to, when we have sworn to maintain it? I was forcibly struck, sir, with one reflection, as the gentleman went on in his speech. He quoted Mr. Madison's resolutions, to prove that a state may interfere, in a case of deliberate, palpable, and dangerous exercise of a power not granted. The honorable member supposes the tariff law to be such an exercise of power; and that, consequently, a case has arisen in which the state may, if it see fit, interfere by its own law. Now it so happens, nevertheless, that Mr. Madison deems this same tariff law quite constitutional. Instead of a clear and palpable violation, it is, in his judgment, no violation at all. So that, while they use his authority for a hypothetical case, they reject it in the very case before them. All this, sir, shows the inherent.....futility.....I had almost used a stronger word—of conceding this power of interference to the states, and then attempting to secure it from abuse by imposing qualifications, of which the states themselves are to judge. One of two things is true; either the laws of the union are beyond the discretion and beyond the control of the states; or else we have no constitution of general government, and are thrust back again to the days of the confederacy.

Let me here say, sir, that if the gentleman's doctrine had been received and acted upon in New England, in the times of the embargo and non-intercourse, we should probably not now have been here. The government would very likely, have gone to pieces, and crumbled into dust. No stronger case can ever arise than existed under those laws; no states can ever entertain a clearer conviction than the New England states then entertained; and if they had been under the influence of that heresy of opinion, as I must call it, which the honorable member espouses, this union would, in all probability, have been scattered to the four winds. I ask the gentleman, therefore, to apply his principles to that case; I ask him to come forth and declare, whether, in his opinion, the New England states, would have been justified in interfering to break up the embargo system, under the conscientious opinions which they held upon it? Had they a right to annul that law? Does he admit or deny? If that

which is thought palpably unconstitutional in South Carolina, justifies that state in arresting the progress of the law, tell me, whether that which was thought palpably unconstitutional also in Massachusetts, would have justified her in doing the same thing? Sir, I deny the whole doctrine. It has not a foot of ground in the constitution to stand on. No public man of reputation ever advanced it in Massachusetts, in the warmest times, or could maintain himself upon it there at any time.

I wish now, sir, to make a remark upon the Virginia resolutions of 1798. I cannot undertake to say how these resolutions were understood by those who passed them. Their language is not a little indefinite. In the case of the exercise by Congress, of a dangerous power, not granted to them, the resolutions assert the right, on the part of the state, to interfere, and arrest the progress of the evil. This is susceptible of more than one interpretation. It may mean no more than that the states may interfere by complaint and remonstrance; or by proposing to the people an alteration of the Federal Constitution. This would all be quite unobjectionable; or, it may be, that no more is meant than to assert the general right of revolu tion, as against all governments, in cases of intolerable oppression. This no one doubts; and this, in my opinion, is all that he who framed the resolutions could have meant by it: for I shall not readily believe, that he was ever of opinion that a state, under the constitution, and in conformity with it, could, upon the ground of her own opinion of its unconstitutionality, however clear and palpable she might think the case, annul a law of Congress, so far as it should operate on herself, by her own legislative power.

I must now beg to ask, sir, whence is this supposed right of the states derived?—where do they find the power to interfere with the laws of the union? Sir, the opinion which the honorable gentleman maintains, is a notion, founded in a total misapprehension, in my judgment, of the origin of this government, and of the foundation on which it stands. I hold it to be a popular government, erected by the people; those who administer it, responsible to the people; and itself capable of being amended and modified, just as the people may choose it should be. It is as popular, just as truly emanating from the people, as the state governments. It is created for one purpose; the state governments for another. It has its own powers; they have theirs. There is no more authority with them to arrest the operation of a law of Congress, than with Congress to arrest the operation of their laws. We are here to administer a constitution emanating immediately from the people, and trusted, by them, to our administration. It is not the creature of the state governments. It is of no moment to the argument, that certain acts of the state legislatures are necessary to fill our seats in this body. That is not one of their original state powers, a part of the sovereignty of the state. It is a duty which the people, by the constitution itself, have imposed on the state legislatures; and which they might have left to be performed elsewhere, if they had seen fit. So they have left the choice of President with electors; but all this does not affect the proposition, that this whole government, President, Senate, and House of Representatives, is a popular government. It leaves it still all its popu-

lar character. The governor of a state, (in some of the states) is chosen, not directly by the people, but by those who are chosen by the people, for the purpose of performing, among other duties, that of electing a governor. Is the government of the state, on that account, not a popular government? This government, sir, is the independent offspring of the popular will. It is not the creature of state legislatures; nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on state sovereignties. The states cannot now make war; they cannot contract alliances; they cannot make each for itself, separate regulations of commerce; they cannot lay imposts; they cannot coin money. If this constitution, sir, be the creature of state legislatures, it must be admitted that it has obtained a strange control over the volitions of its creators.

The people, then, sir, erected this government. They gave it a constitution, and in that constitution they have enumerated the powers which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others they declare, are reserved to the states, or the people. But, sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear, as to avoid possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who then, shall construe this grant of the people? Who shall interpret their will, where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the government? Sir, they have settled all this in the fullest manner. They have left it, with the government itself, in its appropriate branches. Sir, the very chief end, the main design, for which the whole constitution was framed and adopted, was to establish a government that should not be obliged to act through state agency, or depend on state opinion and state discretion. The people had had quite enough of that kind of government, under the confederacy. Under that system, the legal action—the application of law to individuals, belonged exclusively to the states. Congress could only recommend—their acts were not of binding force, till the states had adopted and sanctioned them? Are we in that condition still? Are we yet at the mercy of state discretion, and state construction? Sir, if we are, then vain will be our attempt to maintain the constitution under which we sit.

But, sir, the people have wisely provided, in the constitution itself, a proper, suitable mode and tribunal for settling questions of constitutional law. There are, in the constitution, grants of powers to Congress; and restrictions on these powers. There are, also, prohibitions on the states. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The constitution has itself pointed out, ordained, and established that authority. How has it accomplished this great and essential end? By declaring, sir, that "*the constitution and the laws of the United States, made in pursuance thereof, shall be the supreme law of the land,*

anything in the constitution or laws of any state to the contrary notwithstanding."

This, sir, was the first great step. By this the supremacy of the constitution and laws of the United States is declared. The people so will it. No state law is to be valid, which comes in conflict with the constitution, or any law of the United States passed in pursuance of it. But who shall decide this question of interference? To whom lies the last appeal? This, sir, the constitution itself decides, also, by declaring, "*that the judicial power shall extend to all cases arising under the constitution and laws of the United States.*" These two provisions, sir, cover the whole ground. They are, in truth, the keystone of the arch. With these, it is a constitution; without them, it is a confederacy. In pursuance of these clear and express provisions, Congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the supreme court. It then, sir, became a government. It then had the means of self-protection; and, but for this, it would, in all probability, have been now among things which are past. Having constituted the government, and declared its powers, the people have further said, that since somebody must decide on the extent of these powers, the government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, sir, I repeat, how is it that a state legislature acquires any power to interfere? Who, or what, gives them the right to say to the people, "We, who are your agents and servants for one purpose, will undertake to decide, that your other agents and servants, appointed by you for another purpose, have transcended the authority you gave them!" The reply would be, I think, not impertinent—"Who made you a judge over another's servants? To their own masters they stand or fall."

Sir, I deny this power of state legislatures altogether. It cannot stand the test of examination. Gentlemen may say, that in an extreme case, a state government might protect the people from intolerable oppression. Sir, in such a case, the people might protect themselves, without the aid of the state governments. Such a case warrants revolution. It must make, when it comes, a law for itself. A nullifying act of a state legislature cannot alter the case, nor make resistance any more lawful. In maintaining these sentiments, sir, I am but asserting the rights of the people. I state what they have declared, and insist on their right to declare it. They have chosen to repose this power in the general government, and I think it my duty to support it, like other constitutional powers.

For myself, sir, I do not admit the jurisdiction of South Carolina, or any other state, to prescribe my constitutional duty; or to settle, between me and the people, the validity of laws of Congress, for which I have voted. I decline her umpirage. I have not sworn to support the constitution according to her construction of its clauses. I have not stipulated, by my oath of office, or otherwise, to come under any responsibility, except to the people, and those whom they have appointed to pass upon the question, whether laws, supported by my votes, conform to the constitution of the country. And, sir, if we look to the general nature of the case, could anything

have been more preposterous, than to make a government for the whole union, and yet leave its powers subject, not to one interpretation, but to thirteen, or twenty-four, interpretations? Instead of one tribunal, established by all, responsible to all, with power to decide for all—shall constitutional questions be left to four-and-twenty popular bodies, each at liberty to decide for itself, and none bound to respect the decisions of others; and each at liberty, too, to give a new construction on every new election of its own members? Would anything, with such a principle in it, or rather with such a destitution of all principle, be fit to be called a government? No, sir. It should not be denominated a constitution. It should be called, rather, a collection of topics, for everlasting controversy; heads of debate for a disputatious people. It would not be a government. It would not be adequate to any practical good, nor fit for any country to live under. To avoid all possibility of being misunderstood, allow me to repeat again, in the fullest manner, that I claim no powers for the government by forced or unfair construction. I admit, that it is a government of strictly limited powers; of enumerated, specified, and particularized powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limit and extent may yet, in some cases, admit of doubt; and the general government would be good for nothing, it would be incapable of long existing, if some mode had not been provided, in which those doubts, as they should arise, might be peaceably, but authoritatively, solved.

And now, Mr. President, let me run the honorable gentleman's doctrine a little into its practical application. Let us look at his probable *modus operandi*. If a thing can be done, an ingenious man can tell *how* it is to be done. Now, I wish to be informed *how* this state interference is to be put in practice, without violence, bloodshed, and rebellion. We will take the existing case of the tariff law. South Carolina is said to have made up her opinion upon it. If we do not repeal it, (as we probably shall not,) she will then apply to the case the remedy of her doctrine. She will, we must suppose, pass a law of her legislature, declaring the several acts of Congress, usually called the tariff laws, null and void, so far as they respect South Carolina, or the citizens thereof. So far, all is a paper transaction, and easy enough. But the collector at Charleston, is collecting the duties imposed by these tariff laws—he, therefore, must be stopped. The collector will seize the goods if the tariff duties are not paid. The state authorities will undertake their rescue: the marshal, with his posse, will come to the collector's aid, and here the contest begins. The militia of the state will be called out to sustain the nullifying act. They will march, sir, under a very gallant leader: for I believe the honorable member himself commands the militia of that part of the state. He will raise the NULLIFYING ACT on his standard, and spread it out as his banner! It will have a preamble, bearing, That the tariff laws are palpable, deliberate, and dangerous violations of the constitution! He will proceed, with this banner flying, to the custom-house in Charleston:

"All the while,
Sonorous metal, blowing martial sounds."

Arrived at the custom-house, he will tell the collector that he must collect no more duties under any of the tariff laws. This, he will be somewhat puzzled to say, by the way, with a grave countenance, considering what hand South Carolina, herself, had in that of 1816. But, sir, the collector would, probably, not desist, at his bidding. He would show him the law of Congress, the treasury instruction, and his own oath of office. He would say, he should perform his duty, come what come might. Here would ensue a pause: for they say that a certain stillness precedes the tempest. The trumpeter would hold his breath, awhile, and before all this military array should fall on the custom-house, collector, clerks, and all, it is very probable some of those composing it, would request of their gallant commander in-chief, to be informed a little upon the point of law; for they have, doubtless, a just respect for his opinions as a lawyer, as well as for his bravery as a soldier. They know he has read Blackstone and the Constitution, as well as Turrene and Vauban. They would ask him, therefore, something concerning their rights in this matter. They would inquire, whether it was not somewhat dangerous to resist a law of the United States. What would be the nature of their offence, they would wish to learn, if they, by military force and array, resisted the execution in Carolina of a law of the United States, and it should turn out, after all, that the law *was constitutional*? He would answer, of course, treason. No lawyer could give any other answer. John Fries, he would tell them, had learned that, some years ago. How, then, they would ask, do you propose to defend us? We are not afraid of bullets, but treason has a way of taking people off, that we do not much relish. How do you propose to defend us? "Look at my floating banner," he would reply; "see there the *nullifying law!*" Is it your opinion, gallant commander, they would then say, that if we should be indicted for treason, that same floating banner of your's would make a good plea in bar? "South Carolina is a sovereign state," he would reply. That is true—but would the judge admit our plea? "These tariff laws," he would repeat, "are unconstitutional, palpably, deliberately, dangerously." That all may be so; but if the tribunal should not happen to be of that opinion, shall we swing for it? We are ready to die for our country, but it is rather an awkward business, this dying without touching the ground! After all, that is a sort of *hemp*-tax, worse than any part of the tariff.

Mr. President, the honorable gentleman would be in a dilemma, like that of another great general. He would have a knot before him which he could not untie. He must cut it with his sword. He must say to his followers, defend yourselves with your bayonets; and this is war—civil war.

Direct collision, therefore, between force and force, is the unavoidable result of that remedy for the revision of unconstitutional laws which the gentleman contends for. It must happen in the very first case to which it is applied. Is not this the plain result? To resist, by force, the execution of a law, generally, is treason. Can the courts of the United States take notice of the indulgence of a state to commit treason? The common saying, that a state cannot commit treason herself, is nothing to the purpose. Can she authorise

others to do it? If John Fries had produced an act of Pennsylvania, annulling the law of Congress, would it have helped his case? Talk about it as we will, these doctrines go the length of revolution. They are incompatible with any peaceable administration of the government. They lead directly to disunion and civil commotion; and, therefore, it is, that at their commencement, when they are first found to be maintained by respectable men, and in a tangible form, I enter my public protest against them all.

The honorable gentleman argues, that if this government be the sole judge of the extent of its own powers, whether that right of judging be in Congress, or the Supreme Court, it equally subverts state sovereignty. This the gentleman sees, or thinks he sees, although he cannot perceive how the right of judging, in this matter, if left to the exercise of state legislatures, has any tendency to subvert the government of the union.—The gentleman's opinion may be, that the right *ought not* to have been lodged with the general government; he may like better such a constitution, as we should have under the right of state interference; but I ask him to meet me on the plain matter of fact—I ask him to meet me on the constitution itself—I ask him if the power is not found there—clearly and visibly found there? (Note 3.)

But, sir, what is this danger, and what the grounds of it? Let it be remembered, that the constitution of the United States is not unalterable. It is to continue in its present form no longer than the people who established it shall choose to continue it. If they shall become convinced that they have made an injudicious or inexpedient partition and distribution of power, between the state governments and the general government, they can alter that distribution at will.

If anything be found in the national constitution, either by original provision; or subsequent interpretation, which ought not to be in it, the people know how to get rid of it. If any construction be established, unacceptable to them, so as to become, practically, a part of the constitution, they will amend it, at their own sovereign pleasure, but while the people choose to maintain it, as it is; while they are satisfied with it, and refuse to change it; who has given, or who can give, to the state legislatures, a right to alter it, either by interference, construction or otherwise? Gentlemen do not seem to recollect that the people have any power to do anything for themselves; they imagine there is no safety for them, any longer than they are under the close guardianship of the state legislatures. Sir, the people have not trusted their safety, in regard to the general constitution, to these hands. They have required other security, and taken other bonds. They have chosen to trust themselves, first, to the plain words of the instrument, and to such construction as the government itself, in doubtful cases, should put on its own powers, under their oaths of office, and subject to their responsibility to them: just as the people of a state trust their own state governments with a similar power. Secondly, they have reposed their trust in the efficacy of frequent elections, and in their own power to remove their own servants and agents, whenever they see cause. Thirdly, they have reposed trust in the judicial power, which, in order that it might

be trust-worthy, they have made as respectable, as disinterested, and as independent as was practicable. Fourthly, they have seen fit to rely, in case of necessity, or high expediency, on their known and admitted power, to alter or amend the constitution, peaceably, and quietly, whenever experience shall point out defects or imperfections. And, finally, the people of the United States have, at no time, in no way, directly or indirectly, authorised any state legislature to construe or interpret *their* high instrument of government; much less to interfere, by their own power, to arrest its course and operation.

If, sir, the people, in these respects, had done otherwise than they have done, their constitution could neither have been preserved, nor would it have been worth preserving. And, if its plain provisions shall now be disregarded, and these new doctrines interpolated in it, it will become as feeble and helpless a being, as its enemies, whether early or more recent, could possibly desire. It will exist in every state, but as a poor dependent on state permission. It must borrow leave to be; and will be, no longer than state pleasure, or state discretion, sees fit to grant the indulgence, and to prolong its poor existence.

But, sir, although there are fears, there are hopes also. The people have preserved this, their own chosen constitution, for forty years, and have seen their happiness, prosperity, and renown, grow with its growth, and strengthen with its strength. They are now, generally, strongly attached to it.—Overthrown by direct assault, it cannot be; evaded, undermined, NULLIFIED, it will not be, if we, and those who shall succeed us here, as agents and representatives of the people, shall conscientiously and vigilantly discharge the two great branches of our public trust—faithfully to preserve, and wisely to administer it.

Mr. President, I have thus stated the reasons of my dissent to the doctrines which have been advanced and maintained. I am conscious of having detained you and the Senate much too long. I was drawn into the debate, with no previous deliberation such as is suited to the discussion of so grave and important a subject. But it is a subject of which my heart is full, and I have not been willing to suppress the utterance of its spontaneous sentiments. I cannot, even now, persuade myself to relinquish it, without expressing, once more, my deep conviction, that, since it respects nothing less than the union of the states, it is of most vital and essential importance to the public happiness. I profess, sir, in my career, hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our federal union.—It is to that union we owe our safety at home, and our consideration and dignity abroad. It is to that union that we are chiefly indebted for whatever makes us most proud of our country. That union we reached only by the discipline of our virtues in the severe school of adversity. It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit. Under its benign influences, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings; and, although our territory has

stretched out wider and wider, and our population spread farther and farther, they have not outrun its protection or its benefits. It has been to us all a copious fountain of national, social, and personal happiness. I have not allowed myself, sir, to look beyond the union, to see what might lie hidden in the dark recess behind. I have not coolly weighed the chances of preserving liberty when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counsellor in the affairs of this government, whose thoughts should be mainly bent on considering, not how the union should be best preserved, but how tolerable might be the condition of the people when it shall be broken up and destroyed. While the union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that I seek not to penetrate the veil. God grant that, in my day, at least, that curtain may not rise. God grant, that on my vision never may be opened what lies behind.—When my eyes shall be turned to behold, for the last time, the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious union; on states dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood!—Let their last feeble and lingering glance, rather behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, nor a single star obscured—bearing for its motto, no such miserable interrogatory, as *What is all this worth?* Nor those other words of delusion and folly, *Liberty first, and Union afterwards*—but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart—Liberty *and* Union, now and forever, one and inseparable!

NOTE 1.

Wednesday, February 21, 1787.

Congress assembled: Present, as before. The report of a grand committee, consisting of Mr. Dane, Mr. Varnum, Mr. S. M. Mitchell, Mr. Smith, Mr. Cadwallader, Mr. Irvine, Mr. N. Mitchell, Mr. Forrest, Mr. Grayson, Mr. Blount, Mr. Bull, and Mr. Few; to whom was referred a letter of 14th September, 1786, from J. Dickinson, written at the request of Commissioners from the states of Virginia, Delaware, Pennsylvania, New Jersey, and New York, assembled at the city of Annapolis, together with a copy of the report of said commissioners to the legislatures of the states by whom they were appointed, being an order of the day, was called up, and which is contained in the following resolution; viz.:—

"Congress having had under consideration the letter of John Dickinson, Esq:, Chairman of the commissioners, who assembled at Annapolis during the last year; also, the proceedings of the said commissioners, and entirely coinciding with them, as to the inefficiency of the Federal Government, and the necessity of devising such further provisions as shall render the same adequate to the exigencies of the union, do strongly recommend to the different legislatures to send forward delegates to meet the proposed Convention, on the second Monday, in May next, at the city of Philadelphia."

NOTE 2.

Extract from Mr. Calhoun's Speech, on Mr. Randolph's motion to strike out the minimum valuation on Cotton Goods, in the House of Representatives, April, 1816.

"The debate, heretofore, on this subject, has been on the degree of protection which ought to be afforded to our cotton and woollen manufactures; all professing to be friendly to those infant establishments, and to be willing to extend to them adequate encouragement. The present motion assumes a new aspect. It is introduced, professedly, on the ground that manufactures ought not to receive any encouragement; and will, in its operation, leave our cotton establishments exposed to the competition of the cotton goods of the East Indies, which, it is acknowledged on all sides, they are not capable of meeting with success, without the proviso proposed to be stricken out by the motion now under discussion. Till the debate assumed this new form, he determined to be silent; participating as he largely did, in that general anxiety which is felt, after so long and laborious a session, to return to the bosom of our families. But on a subject of such vital importance, touching as it does, the security and permanent prosperity of our country, he hoped that the House would indulge him in a few observations.

"To give perfection to this state of things, it will be necessary to add, as soon as possible, a system of internal improvements, and, at least, such an extension of our navy, as will prevent the cutting off our coasting trade. The advantage of each is so striking, as not to require illustration, especially after the experience of the late war.

"He firmly believed that the country is prepared, even to maturity, for the introduction of manufactures. We have abundance of resources, and things naturally tend, at this moment, in that direction. A prosperous commerce has poured an immense amount of commercial capital into this country. This capital has, till lately, found occupation in commerce; but that state of the world which transferred it to this country, and gave it active employment, has passed away, never to return. Where shall we now find full employment for our prodigious amount of tonnage? Where markets for the numerous and abundant products of our country! This great body of active capital, which, for *the moment*, has found sufficient employment in supplying our markets, exhausted by the war, and measures preceding it, must find a new direction: it will not be idle. What channel can it take, but that of manufactures? This, if things continue as they are, will be its direction. It will introduce an era in our affairs, in many respects highly advantageous, and ought to be countenanced by the government. Besides, we have already surmounted the greatest difficulty that has ever been found in undertakings of this kind. The cotton and woollen manufactures are not to be *introduced*—they are *already* introduced to a great extent; freeing us entirely from the hazards, and, in a great measure, the sacrifices experienced in giving the capital of the country a new direction. The restrictive measures, and the war, though not intended for that purpose, have, by the necessary operation of things, turned a large amount of capital to this new branch of industry. He had often heard it said, both in and out of Congress, that this effect alone, would indemnify the country for all its losses. So high was this tone of feeling, when the want of these establishments was practically felt, that he remembered, during the war, when some question was agitated respecting the introduction of foreign goods, that many then opposed it on the ground of injuring our manufactures.—He then said, that war alone furnished sufficient stimulus, and perhaps too much, as it would make their growth unnaturally rapid; but that, on the return of peace, it would then be time to show our affection for them. He, at that time, did not expect an apathy and aversion to the extent which is now seen. But it will no doubt be said, if they are so far established, and if the situation of the country is so favorable to their growth, where is the necessity of affording them protection? It is to put them beyond the reach of contingency.

"It has been further asserted that manufactures are the fruitful cause of pauperism; and England has been referred to, as furnishing conclusive evidence of its truth. For his part, he could perceive no such tendency in them, but the exact contrary, as they furnished new stimulus and means of subsistence to the laboring classes of the community. We ought not to look at the cotton and woollen establishments of Great Britain for the prodigious numbers of poor with which her population was disgraced; causes much more efficient exist. Her poor laws, and statutes regulating the prices of labor, with taxes, were the real causes. But if it must be so; if the mere fact that England manufactured more than any other country, explained the cause of her having more beggars, it is just as reasonable to refer her courage, spirit, and all her masculine virtues, in which she excels all other nations, with a single exception—he meant our own—in which we might, without vanity, challenge a preeminence. Another objection had been, which he must acknowledge was better founded, that capital employed in manufacturing produced a greater dependence on the part of the employed, than in commerce, navigation, or agriculture. It is certainly an evil, and to be regretted, but he did not think it a decisive objection to the system; especially when it had incidental political advantages, which, in his opinion, more than counterpoised it. It produced an

interest strictly American, as much so as agriculture, in which it had the decided advantage of commerce or navigation. The country will, from this, derive much advantage. Again: it is calculated to bind together more closely our widely spread republic. It will greatly increase our mutual dependence and intercourse; and will, as a necessary consequence, excite an increased attention to internal improvements, a subject every way so intimately connected with the ultimate attainment of national strength, and the perfection of our political institutions."

Extracts from the Speech of Mr. Calhoun, April, 1816—On the Direct Tax.

"In regard to the question, how far manufactures ought to be fostered, Mr. C. said, it was the duty of this country, as a means of defence, to encourage the domestic industry of the country, more especially that part of it which provides the necessary materials for clothing and defence. Let us look to the nature of the war most likely to occur. England is in the possession of the ocean. No man, however sanguine, can believe that we can deprive her soon, of her predominance there. That control deprives us of the means of maintaining our army and navy cheaply clad. The question relating to manufactures must not depend on the abstract principle, that industry left to pursue its own course, will find in its own interest all the encouragement that is necessary. I lay the claims of the manufacturers entirely out of view, said Mr. C.; but, on general principles, without regard to their interest, a certain encouragement should be extended, at least to our woollen and cotton manufactures.

"This nation," Mr. C. said, "was rapidly changing the character of its industry.—When a nation is agricultural, depending for supply on foreign markets, its people may be taxed through its imports, almost to the amount of its capacity. The nation was, however, rapidly becoming, to a considerable extent, a manufacturing nation."

To the quotations from the speeches and proceedings of the Representatives of South Carolina, in Congress, during Mr. Monroe's administration, may be added the following extract from Mr. Calhoun's report on roads and canals, submitted to Congress on 7th of January, 1819, from the Department of War:

"A judicious system of roads and canals, constructed for the convenience of commerce, and the transportation of the mail only, without any reference to military operations, is itself among the most efficient means for the 'more complete defence of the United States.' Without adverting to the fact that the roads and canals which such a system would require, are, with few exceptions, precisely those which would be required for the operations of war; such a system, by consolidating our union, increasing our wealth and fiscal capacity, would add greatly to our resources in war. It is in a state of war when a nation is compelled to put all its resources, in men, money, skill, and devotion to country, into requisition, that its government realizes in its security, the beneficial effects from a people made prosperous and happy by a wise direction of its resources in peace.

"Should Congress think proper to commence a system of roads and canals, for 'the more complete defence of the United States,' the disbursements of the sum appropriated for the purpose might be made by the Department of War, under the direction of the President. Where incorporate companies are already formed, or the road or canal commenced, under the superintendence of a state, it perhaps would be advisable to direct a subscription on the part of the United States, on such terms and conditions as might be thought proper."

NOTE 3.

The following resolutions of the legislature of Virginia, bear so pertinently and so strongly on this point of the debate, that they are thought worthy of being inserted in a note, especially as other resolutions of the same body are referred to in the discussion. It will be observed that these resolutions were unanimously adopted in each House.

VIRGINIA LEGISLATURE.

Extract from the Message of Gov. Tyler, of Virginia, Dec. 4, 1809.

"A proposition from the state of Pennsylvania is herewith submitted, with Governor Snyder's letter accompanying the same, in which is suggested the propriety of amending the constitution of the United States, so as to prevent collision between the government of the union and the state governments."

HOUSE OF DELEGATES, *Friday, December* 15, 1809

On motion, *Ordered*, That so much of the Governor's communication as relates to the communication from the governor of Pennsylvania, on the subject of an amendment, proposed by the legislature of that state, to the constitution of the United States, be referred to Messrs. Peyton, Otey, Cabell, Walker, Madison, Holt, Newton, Parker, Stevenson, Randolph [of Amelia,] Cocke, Wyatt, and Ritchie.—*Page* 25 *of the Journal.*

Thursday, January 11, 1810.

Mr. Peyton, from the committee to whom was referred that part of the governor's communication which relates to the amendment proposed by the state of Pennsylvania, to the constitution of the United States, made the following report:

The committee to whom was referred the communication of the governor of Pennsylvania, covering certain resolutions of the legislature of that state, proposing an amendment of the constitution of the United States, by the appointment of an impartial tribunal to decide disputes between the States and Federal Judiciary, have had the same under their consideration, and are of opinion, that a tribunal is already provided by the constitution of the United States, to wit: the Supreme Court, more eminently qualified, from their habits and duties, from the mode of their selection, and from the tenure of their offices, to decide the disputes aforesaid, in an enlightened and impartial manner, than any other tribunal which could be created.

The members of the Supreme Court are selected from those in the United States who are most celebrated for virtue and legal learning, not at the will of a single individual, but by the concurrent wishes of the President and Senate of the United States; they will, therefore, have no local prejudices and partialities. The duties they have to perform, lead them, necessarily, to the most enlarged and accurate acquaintance with the jurisdiction of the Federal and State Courts together, and with the admirable symmetry of our government. The tenure of their offices enables them to pronounce the sound and correct opinions they may have formed, without fear, favor, or partiality.

The amendment to the constitution proposed by Pennsylvania, seems to be founded upon the idea that the Federal Judiciary will, from a lust of power, enlarge their jurisdiction, to the total annihilation of the jurisdiction of the state courts; that they will exercise their will, instead of the law and the constitution.

This argument, if it proves anything, would operate more strongly against the tribunal proposed to be created, which promised so little, than against the Supreme Court, which, for the reasons given before, have everything connected with their appointment calculated to ensure confidence. What security have we, were the proposed amendment adopted, that this tribunal would not substitute their will and their pleasure in place of the law? The Judiciary are the weakest of the three departments of government, and least dangerous to the political rights of the constitution; they hold neither the purse nor the sword; and, even to enforce their own judgments and decisions, must ultimately depend upon the Executive arm. Should the Federal Judiciary, however, unmindful of their weakness, unmindful of the duty which they owe to themselves and their country, become corrupt, and transcend the limits of their jurisdiction, would the proposed amendment oppose even a probable barrier in such an improbable state of things?

The creation of a tribunal, such as is proposed by Pennsylvania, so far as we are able to form an idea of it, from the description given in the resolutions of the legislature of that state, would, in the opinion of your committee, tend rather to invite, than to prevent, collisions between the Federal and State Courts. It might also become, in process of time, a serious and dangerous embarrassment to the operations of the general government.

Resolved, therefore, That the legislature of this state do disapprove of the amendmen to the constitution of the United States, proposed by the legislature of Pennsylvania.

Resolved, also, That his excellency the governor, be, and he is hereby, requested to transmit forthwith, a copy of the foregoing preamble and resolutions, to each of the senators and representatives of this state in Congress, and to the executive of the several states in the union, with a request that the same be laid before the legislatures thereof.

The said resolutions being read a second time, were, on motion, ordered to be referred to a committee of the Whole House on the state of the Commonwealth.

Tuesday, January 23, 1810.

The House, according to the order of the day, resolved itself into a Committee of the Whole House on the state of the Commonwealth, and after sometime spent therein, Mr. Speaker resumed the chair, and Mr. Stanard, of Spottsylvania reported that the committee had, according to order, had under consideration the preamble and resolutions of the select committee, to whom was referred that part of the governor's communication which relates to the amendment proposed to the constitution of the United States, by the legislature of Pennsylvania, had gone through with the same, and directed him to report them to the House without amendment; which he handed in at the clerk's table.

And the question being put on agreeing to the said preamble and resolutions, they were agreed to by the House unanimously.

Ordered, That the clerk carry the said preamble and resolutions to the Senate, and desire their concurrence.

In Senate—*Wednesday, January* 24, 1810.

The preamble and resolutions on the amendment to the constitution of the United States proposed by the legislature of Pennsylvania, by the appointment of an impartial tribunal to

decide disputes between the State and Federal Judiciary, being also delivered in and twice read, on motion, was ordered to be committed to Messrs. Nelson, Currie, Campbell, Upshur, and Wolfe.

Friday, January 26.

Mr. Nelson reported, from the committee to whom was committed the preamble and resolutions on the amendment proposed by the legislature of Pennsylvania, &c. &c. that the committee had, according to order, taken the said preamble, &c. under their consideration, and directed him to report them without any amendment.

And on the question being put thereupon the same was agreed to unanimously.

MR. WEBSTER'S LAST REMARKS.

Mr. HAYNE having rejoined to Mr. WEBSTER, especially on the constitutional question—

Mr. WEBSTER rose, and, in conclusion, said:

A few words, Mr. President, on this constitutional argument, which the honorable gentleman has labored to reconstruct.

His argument consists of two propositions, and an inference. His propositions are—

1. That the Constitution is a compact between the States.

2. That a compact between two, with authority reserved to one to interpret its terms, would be a surrender to that one, of all power whatever.

3. Therefore, (such is his inference) the general government does not possess the authority to construe its own powers.

Now, sir, who does not see, without the aid of exposition or detection, the utter confusion of ideas, involved in this, so elaborate and systematic argument.

The constitution, it is said, is a compact *between states;* the states, then, and the states only, *are parties to the compact.* How comes the general government itself *a party?* Upon the honorable gentleman's hypothesis, the general government is the result of the compact, the creature of the compact, not one of the parties to it. Yet the argument, as the gentleman has now stated it, makes the government itself one of its own creators. It makes it a party to that compact, to which it owes its own existence.

For the purpose of erecting the constitution on the basis of a compact, the gentleman considers the states as parties to that compact; but as soon as his compact is made, then he chooses to consider the general government, which is the offspring of that compact, not its offspring, but one of its parties; and so, being a party, has not the power of judging on the terms of compact. Pray, sir, in what school is such reasoning as this taught?

If the whole of the gentleman's main proposition were conceded to him, that is to say—if I admit for the sake of the argument, that the constitution is a compact between states, the inferences, which he draws from that proposition, are warranted by no just reason. Because, if the constitution be a compact between states, still, that constitution, or that compact, has established a government, with

certain powers; and whether it be one of those powers, that it shall construe and interpret for itself, the terms of the compact, in doubtful cases, is a question which can only be decided by looking to the compact, and inquiring what provisions it contains on this point. Without any inconsistency with natural reason, the government, even thus created, might be trusted with this power of construction. The extent of its powers, therefore, must still be sought for in the instrument itself.

If the old confederation had contained a clause, declaring that resolutions of the Congress should be the supreme law of the land, any state law or constitution to the contrary notwithstanding, and that a committee of Congress, or any other body created by it, should possess judicial powers, extending to all cases arising under resolutions of Congress, then the power of ultimate decision would have been vested in Congress, under the confederation, although that confederation was a compact between states; and, for this plain reason: that it would have been competent to the states, who alone were parties to the compact, to agree, who should decide, in cases of dispute arising on the construction of the compact.

For the same reason, sir, if I were now to concede to the gentleman his principal propositions, viz. that the constitution is a compact between states, the question would still be, what provision is made, in this compact, to settle points of disputed construction, or contested power, that shall come into controversy? and this question would still be answered, and conclusively answered, by the constitution itself. While the gentleman is contending against construction, he himself is setting up the most loose and dangerous construction. The constitution declares, that *the laws of Congress passed in pursuance of the constitution shall be the supreme law of the land.* No construction is necessary here. It declares, also, with equal plainness and precision, *that the judicial power of the United States shall extend to every case arising under the laws of Congress.* This needs no construction. Here is a law, then, which is declared to be supreme; and here is a power established, which is to interpret that law. Now, sir, how has the gentleman met this? Suppose the constitution to be a compact, yet here are its terms, and how does the gentleman get rid of them? He cannot argue the *seal off the bond*, nor the words out of the instrument. Here they are—what answer does he give to them? None in the world, sir, except, that the effect of this would be to place the states in a condition of inferiority; and because it results, from the very nature of things, there being no superior, that the parties must be their own judges! Thus closely and cogently does the honorable gentleman reason on the words of the constitution. The gentleman says, if there be such a power of final decision in the general government, he asks for the grant of that power. Well, sir, I show him the grant—I turn him to the very words—I show him that the laws of Congress are made supreme; and that the Judicial power extends, by express words, to the interpretation of these laws. Instead of answering this, he retreats into the general reflection, that it must result *from the nature of things*, that the states, being parties, must judge for themselves.

I have admitted, that, if the constitution were to be considered as the creature of the state governments, it might be modified, interpreted, or construed, according to their pleasure. But, even in that case, it would be necessary that they should *agree*. One, alone, could not interpret it conclusively; one, alone, could not construe it; one, alone, could not modify it. Yet the gentleman's doctrine is, that Carolina, alone, may construe and interpret that compact which equally binds all, and gives equal rights to all.

So then, sir, even supposing the constitution to be a compact between the states, the gentleman's doctrine, nevertheless, is not maintainable; because, first, the general government is not a party to that compact, but a *government* established by it, and vested by it with the powers of trying and deciding doubtful questions; and, secondly, because, if the constitution be regarded as a compact, not one state only, but all the states, are parties to that compact, and one can have no right to fix upon it her own peculiar construction.

So much, sir, for the argument, even if the premises of the gentleman were granted, or could be proved. But, sir, the gentleman has failed to maintain his leading proposition. He has not shown, it cannot be shown, that the constitution is a compact between state governments. The constitution itself, in its very front, refutes that idea: it declares that it is ordained and established *by the people of the United States*. So far from saying that it is established by the governments of the several states, it does not even say that it is established by the people *of the several states;* but it pronounces that it is established by the people of the United States, in the aggregate. The gentleman says, it must mean no more than the people of the several states. Doubtless, the people of the several states, taken collectively, constitute the people of the United States; but it is in this, their collective capacity, it is as all the people of the United States, that they establish the constitution. So they declare; and words cannot be plainer than the words used.

When the gentleman says the constitution is a compact between the states, he uses language exactly applicable to the old confederation. He speaks as if he were in Congress before 1789. He describes fully that old state of things then existing. The confederation was, in strictness, a compact; the states, as states, were parties to it. We had no other general government. But that was found insufficient, and inadequate to the public exigencies. The people were not satisfied with it, and undertook to establish a better. They undertook to form a general government, which should stand on a new basis—not a confederacy, not a league, not a compact between states, but a *constitution;* a popular government, founded in popular election, directly responsible to the people themselves, and divided into branches, with prescribed limits of power, and prescribed duties. They ordained such a government; they gave it the name of a *constitution*, and therein they established a distribution of powers between this, their general government, and their several state governments. When they shall become dissatisfied with this distribution, they can alter it. Their own power over their own

instrument remains. But until they shall alter it, it must stand as their will, and is equally binding on the general government and on the states.

The gentleman, sir, finds analogy where I see none. He likens it to the case of a treaty, in which, there being no common superior, each party must interpret for itself, under its own obligation of good faith. But this is not a treaty, but a constitution of government, with powers to execute itself, and fulfil its duties.

I admit, sir, that this government is a government of checks and balances; that is, the House of Representatives is a check on the Senate, and the Senate is a check on the House, and the President a check on both. But I cannot comprehend him, or, if I do, I totally differ from him, when he applies the notion of checks and balances to the interference of different governments. He argues, that if we transgress, each state, as a state, has a right to check us. Does he admit the converse of the proposition, that we have a right to check the states? The gentleman's doctrines would give us a strange jumble of authorities and powers, instead of governments of separate and defined powers. It is the part of wisdom, I think, to avoid this; and to keep the general government and the state governments, each in its proper sphere, avoiding, as carefully as possible, every kind of interference.

Finally, sir, the honorable gentleman says, that the states will only interfere, by their power, to preserve the constitution. They will not destroy it—they will not impair it—they will only save, they will only preserve, they will only strengthen it! Ah! sir, this is but the old story. All regulated governments, all free governments, have been broken up by similar disinterested and well disposed interference! It is the common pretence. But I take leave of the subject.

REMARKS

IN THE SENATE OF THE UNITED STATES, ON THE APPLICATION FOR THE ERECTION OF A BREAKWATER AT NANTUCKET. 1828.

On the 8th of March, 1828, the House of Representatives passed a Bill entitled "An Act making appropriations for Internal Improvements."—This Bill contained appropriations for sundry objects; among which were the further continuance of the Cumberland road, the removal of obstructions to navigation, and the erection of piers at the mouths of several rivers running into Lake Erie and Lake Ontario, the improvement of the navigation of the Kennebec River, below Hallowell, and for a Lighthouse, on the Brandywine shore, in the Bay of Delaware.

There was also in the Bill the following clause. "*For defraying the expenses incidental to making examinations and surveys, under the act of the thirtieth of April eighteen hundred and twenty-four, thirty thousand dollars.*"—When the Bill came to the Senate, it was referred to the Committee of Finance, who reported, among other amendments, the following.—"Strike out, after the word *expenses*, in the above clause, all that follows, and insert other words, so as that the whole clause, when amended as proposed, should read thus—"For defraying the expenses of completing examinations and surveys, *already commenced and unfinished*, under the act of the thirtieth of April 1824, thirty thousand dollars, *provided*, that no part of this sum shall be expended upon any other examinations and surveys."

On this amendment to the bill of the House, the Senate in committee of the whole was equally divided, and the amendment was carried, by the casting vote of the Vice President. The House disagreed to the amendment and returned the bill to the Senate, where it was again referred to the Committee of Finance, and the chairman of that committee, (Mr. Smith of Maryland,) on Friday, the second of May, again reported the bill and amendment, with the following remarks and motion:

"In reporting to the Senate the disagreement of the House of Representatives to the third and fifth amendments of the Senate to the bill making appropriations for internal improvements, and referred to the Committee on Finance, I desire to state—

"That the opinion of the committee on the propriety of the amendments, remains unchanged; but as the item to which the third and principal amendment relates is incorporated in the bill providing for other objects, deemed of immediate urgency and great importance to the public service, which might be materially prejudiced, and finally defeated at this late period of the session, by adhering to the amendment, and prolonging the disagreement between the two Houses: they do not desire to incur those risks, or to produce the delay incident to a renewed and protracted discussion.

"From these considerations, I report the bill to the Senate; and now move that the Senate recede from their amendments, and concur in the disagreement of the House of Representatives."

On this motion to *recede* from the amendment, discussion arose, in which Mr. WEBSTER took part.

The Act of April 30th, 1824, referred to in the bill, and in the amendment, is in the following words.

"An Act to procure the necessary Surveys, Plans, and Estimates, upon the subject of Roads and Canals.

"Sect. 1. Be it enacted, &c. that the President of the United States is hereby authorised to cause the necessary surveys, plans, and estimates, to be made, of the routes of such Roads and Canals as he may deem of national importance, in a commercial or military point of view, or necessary for the transportation of the Mail; designating, in the case of each canal, what parts may be made capable of sloop navigation. The surveys, plans, and estimates, for each, when completed, to be laid before Congress.

"Sect. 2. And be it further enacted, that, to carry into effect the objects of this act, the President be, and he is hereby authorised, to employ two or more skilful civil engineers, and such officers of the corps of engineers, or who may be detailed to do duty with that corps, as he may think proper; and the sum of thirty thousand dollars be, and the same is hereby appropriated, to be paid out of any moneys in the Treasury not otherwise appropriated."

In the following years, 1825, 1826, and 1827, appropriations had been made, for the further execution of the powers conferred on the President by this law.

At the session of 1827-28, a petition was pending before both Houses of Congress for the erection of a Breakwater at Nantucket, in regard to which a survey had been made, by the Engineer Department, the preceding summer.

The amendment, proposed by the Senate to the bill from the House, was regarded by the friends of internal improvement, as hostile to that whole system. For this reason, and on this ground, as well as others, it was opposed. Mr. WEBSTER's speech, delivered on this occasion, has never been printed, as far as the publishers of this volume can learn. They have obtained, however, the Reporter's notes, from which the following sketch is made. They have felt the more desirous of adding this speech, though in a very imperfect form, to their collection, from the interesting facts which it affords, relative to the Nantucket whale fishery; for which, we are requested to say, the author was chiefly indebted to the Honorable Mr. Burnell, of Nantucket, a member of the Senate of Massachusetts.

MR. WEBSTER said, the true question before the Senate, was, as he had stated before, whether the law of April 1824 should be effectually repealed, and all further proceedings under it stayed. That law would not execute itself. Without appropriations to carry on its purpose and effect, it must be a dead letter. It is now proposed to declare, that nothing shall be appropriated to any surveys, except those already begun. In other words, that the whole system of internal improvements shall be arrested, and stop where it is. I do not, Mr. President, say that this is an unfair object. Those who deny to the government the power of making internal improvements, and we know there are such, naturally wish to restrain the exercise of the power, and prevent it altogether. On this question, public men divide; and the general opinion of the community must ultimately settle it, one way or the other.

The law of 1824 was passed to avoid the necessity of particularizing, by law, every survey which should be made by the authority of the government. It referred the subject of these preliminary surveys, within certain defined limits and restrictions, to the executive. From that time the work has gone on, in that manner, under annual appropriations. This amendment is an act of hostility aimed at the whole system. It goes on grounds which lie against all such measures, under all circumstances. It was not his intention, Mr. Webster said, to go far into the general subject at present.

It was well known that the idea of aiding in works of internal improvement, was seriously brought forward in Mr. Gallatin's Report in 1809. Events, occurring in the five or six following years, withdrew attention from the subject, but it was revived, with new zeal, and under new auspices, after the peace.

He had himself, Mr. Webster said, been in favor of exercising the power, from the first time he came into Congress, and his opinion was not altered. He saw evidently now existing, a spirit of hostility to these undertakings by government, and as he had already said, it must be ultimately decided by the people themselves.

He should not have troubled the Senate on this occasion, but for a single occurrence. The honorable member from South Carolina, (Mr. Smith,) in opposing the whole system, had commented on some of the plans and projects, for which the aid of government was now solicited. Among others, he alluded to the improvements contemplated near Nantucket, by a Breakwater. The honorable member seemed to think very lightly of this, both with regard to its practicability and its importance. He (Mr. W.) professed to know no more of the former than the surveys had taught him, but he was well informed by competent judges, that the latter was not likely to be overrated. A vast commerce passes through the sound between the Island of Nantucket and the continent. If an artificial harbour be necessary for the accommodation and safety of this commerce, the estimated expense is not out of proportion to the magnitude of the object. The gentleman from South Carolina had said, that near two millions of dollars had been expended on the Cumberland road. He (Mr W.) did not mean to underrate the value of that great line of communication and transportation, but if we look to the amount of transportation through the sound, we shall find it very far surpassing that of the road. A vast coasting trade plies through this sound, which is a sort of defile, a narrow passage, obstructed with rocks and shoals, and deficient in convenient and safe harbours. The anchoring of a floating light vessel in the sound, had furnished the means of ascertaining the number of vessels which passed through it annually; and perhaps some members will be surprised to hear, that that number does not fall short of 16,000. Nantucket itself, said Mr. W. is a very striking and peculiar portion of the national interest. There is a population of eight or nine thousand persons, living here in the sea, adding largely every year to the amount of national wealth by the boldest and most persevering industry. They have been twice reduced to the very verge of ruin, and yet have recovered by new efforts and untiring toil. In 1775, when Mr. Burke, in his speech in the house of commons, on the resolutions for conciliation with the American Colonies, alluded, in such terms of eulogy, to the Nantucket whale fishery, there were 150 ships engaged in that trade, and spread over every quarter of the ocean. There were employed upwards of two thousand men. They were even then "found among the tumbling mountains of ice, and penetrating into the deepest frozen recesses of Hudson's Bay and Davis's Straits. Again, they pierced into the opposite region of polar cold, and were at the antipodes engaged under the frozen serpent of the South. Places which seemed too remote, and

romantic objects, for the grasp of national ambition, were but stages and resting places in the progress of their victorious industry. Whilst some of them drew the line and struck the harpoon on the coast of Africa, others run the longitude and pursued their gigantic game along the coast of Brazil. No sea but what was vexed by their fisheries. No climate that was not witness to their toils."*

At the end of the war, of the 150 ships but 15 remained, the rest had been taken by the enemy. At present, I believe, they have 65 or 75 ships engaged in the whale fishery, with an aggregate of thirty thousand tons of tonnage, and of the value of two millions of dollars. Their history is interesting. An intelligent friend, a citizen of the Island, has furnished me with a note of the progress of this branch of industry, which is in the highest degree honorable to the spirit of enterprise which has animated the people of that place for more than a century and a half. They are well entitled to public encouragement. Their harbour is bad, and in addition to the accommodation of the coasting trade, and other interests, a breakwater would be of the greatest utility to them. I hope their application will not be prejudged. Gentlemen will find the subject to be one full of interest and importance; and as my colleague intends, ere long, to bring it to the consideration of the Senate, I hope it may have a fair hearing.

NOTE.

The Island of Nantucket was settled from the County of Essex in Massachusetts, about 1660. Thirty years afterwards, the whale fishery commenced, and was, at first, carried on by boats from the shore. This mode of conducting the business reached its height in 1726, in which year eighty or ninety whales were brought to the shore, and of these, thirteen are said to have been taken in one day. Within thirty or forty years after this, the boat fishing fell off as the whales drew off from the shore, and vessels were required to pursue them. Some small sloops, of thirty or forty tons each, had been employed as early as 1715. During the seventy years that the whales were taken in boats, not a single white man lost his life in pursuit of them. The whale taken from the shore was the right whale, as the spermaceti does not visit soundings.

Soon after vessels were employed in this business, a northerly gale drove one of them from the coast, and when it abated, spermaceti whales were discovered, and one was taken and brought into port. This was, probably, the first of the kind ever taken; and being found more valuable than the right whale, the adventurous whalemen were induced to launch into the deep, and a new direction was thereupon given to the business. There were, in 1730, nearly thirty sail, of from 30 to 50 tons, employed, and they obtained annually, about 3,700 barrels of oil, which, until 1745, was shipped to Boston and there sold. In the last mentioned year, a voyage was made to London, and after that a trade was carried on with that port. In 1746

* Burke's Speech, 1775.

the pursuit of the whale had extended to Davis's Straits; and in 1765 to the Western Islands—(Azores.)

Between the years 1755 and 1768, ten sail were either lost or taken, by the French. There were, in 1770, 120 sail, of from 75 to 110 tons, engaged in the trade, and 18,000 barrels of oil were obtained annually. And between 1772 and 1775 there were 150 sail, of from 90 to 180 tons, upon the coasts of Guinea, Brazil, West Indies, &c. and 30,000 barrels of oil were annually obtained, which sold, in the London market, for £44 to £45—making an aggregate of £167,000. There were, at this time, 2,200 seamen employed in fishing, and 220 in the London trade. During the Revolutionary War the whale fishery was prostrated, and the inhabitants of the island suffered much in their property; and toward the close of it, great distress began to appear among them. In 1783, of their large fleet, they had remaining, but 7 sail to Brazil of 100 to 150 tons—5 to the Coast of Guinea, and 7 to the West Indies; and they obtained but about three thousand barrels of oil.

The British government availed themselves of the depressed condition of the fishery, and, in 1784, exacted a duty of £18.3 sterling per ton, which almost entirely destroyed the market. Strong inducements were held out to the inhabitants of Nantucket to remove to Halifax, and establish themselves there. In 1786-7 a considerable number removed to that place, but soon abandoned it and returned. After this period, the fishery gradually advanced; and, in those seas where the whale had been taken for years, viz. the Western Islands, the coast of Guinea, Brazils, and some less frequented coasts, the business was diligently pursued until, in 1788, stimulated by large bounties, a ship was fitted from London for the Pacific. In that year, the first Spermaceti, which was ever vexed by man in that ocean, yielded to the skill of the only American on board that vessel, a native of Nantucket, now living in that place. The first vessel which ever went from that town into that ocean commenced her voyage in 1791. The Spermaceti whale continued to be taken on the coasts of Chili and Peru, and the fleet to augment, until the war of 1812 put a stop to the pursuit. At that time, there were employed in the business about 40 ships, of 200 to 250 tons each. One half of this number fell into the hands of the enemy; and at the peace of 1815, twenty ships only, from that port, remained to continue the fishery. These were soon fitted, and speedily took their departure for either the coasts of Brazil, Chili, or Peru. The increase of the business soon spread a large fleet on the last mentioned coast, and the whale became exceedingly scarce. They were, in fact, driven by continued pursuit from their accustomed track.

It became necessary to explore regions unfrequented, even to procure cargoes for vessels already in the Pacific. Accordingly, in the year 1819, steering westward to the longitude of 90 to 100, whales were again found, and large quantities of oil procured in a short time. This "off shore ground," as it was called, being quite limited, was soon crowded with ships, and other haunts of the whale must be found. In 1821, therefore, the first ship which ever adventured, to the north, as it is called, to the "Japan Coast," entered those seas; and her great success richly repaid her enterpri-

sing owners. She belonged to Nantucket. Since that period, the principal part of the spermaceti oil imported into this country, has been procured northward of the Sandwich Islands, in various degrees of latitude and longitude—in an ocean almost entirely unexplored, and in which there have been already discovered, by these navigators, a large number of most dangerous reefs and shoals.

The history of the whale fishery from New Bedford, is comprehended, in all important respects, in the foregoing statement as to Nantucket. The fishery of the former has always followed that of the latter. Its local advantages are superior, and have enabled it already to maintain a powerful rivalship in the trade.

In 1827, New Bedford had engaged in whale fishing, 68 Ships and 17 Brigs. There were imported of Spermaceti oil 43,533 bbls—of Whale oil, 22,065 bbls—Bone (whale), 169,581 pounds.

Nantucket had engaged in the fishery, 62 Ships and 1 Brig. Spermaceti oil imported 32,190 bbls.—Whaleoil, 2,000 bbls.—Bone, 12,000 lbs.

There were imported into all other ports:—in New York, Connecticut, Rhode Island, &c. of Spermaceti oil 16,467 bbls.—Whaleoil, 25,000 bbls.

The Ships engaged in the Spermaceti fishing in the Pacific, are from 300 to 480 tons each, and are manned with 21 to 30 men. In 1827 the value of oil averaged about 70 cts. for Spermaceti, and 30 cents for whale, and 50 cents for bone.

This little spot is the nucleus of the whale fishing of the world. A business of so much importance, and so rapidly increasing, would seem to deserve attention, and such aid as is consistent with other great branches of national industry and enterprise.

INTRODUCTORY LECTURE,

READ TO THE BOSTON MECHANICS' INSTITUTION, AT THE OPENING OF THE COURSE OF LECTURES. NOV. 12, 1828.

I APPEAR before you, gentlemen, for the performance of a duty, which is, in so great a degree, foreign from my habitual studies and pursuits, that it may be presumptuous in me to hope for a creditable execution of the task. But I have not allowed considerations of this kind to weigh against a strong and ardent desire to signify my approbation of the objects, and my conviction of the utility, of this institution; and to manifest my prompt attention to whatever others may suppose to be in my power, to promote its respectability and to further its designs.

The Constitution of the Association declares its precise object to be, "Mutual Instruction in the Sciences, as connected with the Mechanic Arts."

The distinct purpose is to connect science, more and more, with art; to teach the established, and invent new, modes of combining skill with strength; to bring the power of the human understanding in aid of the physical powers of the human frame; to facilitate the cooperation of the mind with the hand; to augment convenience, lighten labor, and mitigate toil, by stretching the dominion of mind, farther and farther, over the elements of nature, and by making those elements, themselves, submit to human rule, follow human bidding, and work together for human happiness.

The visible and tangible creation into which we are introduced at our birth, is not, in all its parts, fixed and stationary. Motion, or change of place, regular or occasional, belongs to all or most of the things which are around us. Animal life everywhere moves; the earth itself has its motion, and its complexities of motion; the ocean heaves and subsides; rivers run lingering or rushing, to the sea; and the air which we breathe moves and acts with mighty power. Motion, thus pertaining to the physical objects which surround us, is the exhaustless fountain, whence philosophy draws the means, by which, in various degrees, and endless forms, natural agencies and the tendencies of inert matter, are brought to the succour and assis-

tance of human strength. It is the object of mechanical contrivance to modify motion, to produce it in new forms, to direct it to new purposes, to multiply its uses,—by means of it to do better, that which human strength could do without its aid,—and to perform that, also, which such strength, unassisted by art, could not perform.

Motion itself is but the result of force; or, in other words, force is defined to be whatever tends to produce motion. The operation of forces, therefore, on bodies, is the broad field, which is open for that philosophical examination, the results of which it is the business of mechanical contrivance to apply. The leading forces or sources of motion are, as is well known, the power of animals, gravity, heat, the winds, and water. There are various others of less power, or of more difficult application. Mechanical philosophy, therefore, may be said to be that science which instructs us in the knowledge of natural moving powers, animate or inanimate; in the manner of modifying those powers, and of increasing the intensity of some of them by artificial means, such as heat and electricity; and in applying the varieties of force and motion, thus derived from natural agencies, to the arts of life. This is the object of mechanical philosophy. None can doubt, certainly, the high importance of this sort of knowledge, or fail to see how suitable it is to the elevated rank and the dignity of reasoning beings. Man's grand distinction is his intellect, his mental capacity. It is this, which renders him highly and peculiarly responsible to his Creator. It is this, on account of which the rule over other animals is established in his hands; and it is this, mainly, which enables him to exercise dominion over the powers of nature, and to subdue them to himself.

But it is true, also, that his own animal organization gives him superiority, and is among the most wonderful of the works of God on earth. It contributes to cause, as well as prove, his elevated rank in creation. His port is erect, his face toward heaven, and he is furnished with limbs which are not absolutely necessary to his support or locomotion, and which are at once powerful, flexible, capable of innumerable modes and varieties of action, and terminated by an instrument of wonderful, heavenly workmanship,—the human hand. This marvellous physical conformation, gives man the power of acting, with great effect, upon external objects, in pursuance of the suggestions of his understanding, and of applying the results of his reasoning power to his own purposes. Without this particular formation, he would not be man, with whatever sagacity he had been endowed. No bounteous grant of intellect, were it the pleasure of heaven to make such grant, could raise any of the brute creation to an equality with the human race. Were it bestowed on the Leviathan, he must remain, nevertheless, in the element where alone he could maintain his physical existence. He would still be but the inelegant, misshapen inhabitant of the ocean, "wallowing unwieldy, enormous in his gait." Were the Elephant made to possess it, it would but teach him the deformity of his own structure, the unloveliness of his frame, though "the hugest of things," his disability to act on external matter, and the degrading nature of his own physical wants, which lead him to the deserts, and give him for his favorite

home the torrid plains of the tropics. It was placing the king of Babylon sufficiently out of the rank of human beings, though he carried all his reasoning faculties with him, when he was sent away, to eat grass like an ox. And this may properly suggest to our consideration, what is undeniably true, that there is hardly a greater blessing conferred on man than his natural wants. If he had wanted no more than the beasts, who can say how much more than they, he would have attained? Does he associate, does he cultivate, does he build, does he navigate? The original impulse to all these, lies in his wants. It proceeds from the necessities of his condition, and from the efforts of unsatisfied desire. Every want not of a low kind, physical as well as moral, which the human breast feels, and which brutes do not feel and cannot feel, raises man, by so much, in the scale of existence, and is a clear proof, and a direct instance, of the favor of God towards his so much favored human offspring. If man had been so made as to have desired nothing, he would have wanted almost everything worth possessing.

But doubtless the reasoning faculty, the mind, is the leading characteristic attribute of the human race. By the exercise of this, he arrives at the knowledge of the properties of natural bodies. This is science, properly and emphatically so called. It is the science of pure mathematics; and in the high branches of this science lies the true sublime of human acquisition. If any attainment deserve that epithet, it is the knowledge, which, from the mensuration of the minutest dust of the balance, proceeds on the rising scale of material bodies, everywhere weighing, everywhere measuring, everywhere detecting and explaining the laws of force and motion, penetrating into the secret principles which hold the universe of God together, and balancing world against world, and system against system. When we seek to accompany those, who pursue their studies at once so high, so vast and so exact; when we arrive at the discoveries of Newton, which pour in day, on the works of God, as if a second *fiat* for light had gone forth from his own mouth;—when, further, we attempt to follow those, who set out where Newton paused, making his goal their starting place, and proceeding with demonstration upon demonstration, and discovery upon discovery, bring new worlds, and new systems of worlds within the limits of the known universe, failing to learn all only because all is infinite; however we say of man, in admiration of his physical structure, that "in form and moving he is express and admirable," it is here, and here without irreverence, we may exclaim, "in apprehension how like a God!" The study of the pure mathematics will of course not be extensively pursued in an institution, which, like this, has a direct practical tendency and aim. But it is still to be remembered, that pure mathematics lie at the foundation of mechanical philosophy, and that it is ignorance only which can speak or think of that sublime science as useless research or barren speculation.

It has already been said that the general and well known agents, usually regarded as the principal sources of mechanical powers, are, gravity, acting on solid bodies, the fall of water, which is but gravity acting on fluids, air, heat, and animal strength. For the

useful direction and application of the four first of these, that is, of all of them which belong to inanimate nature, some intermediate apparatus, or contrivance, becomes necessary; and this apparatus, whatever its form, is a machine. A machine is an invention for the application of motion, either by changing the direction of the moving power, or by rendering a body in motion capable of communicating a motion greater or less than its own to other bodies, or by enabling it to overcome a power of greater intensity or force than its own. And it is usually said that every machine, however apparently complex, is capable of being resolved into some one or more of those single machines, of which, according to one mode of description, there are six, and according to another, three, called the mechanical powers. But because machinery, or all mechanical contrivance, is thus capable of resolution into a few elementary forms, it is not to be inferred that science, or art, or both together, though pressed with the utmost force of human genius, and cultivated by the last degree of human assiduity, will ever exhaust the combinations into which these elementary forms may be thrown. An indefinite, though not an infinite reach of invention may be expected; but indefinite, also, if not infinite, are the possible combinations of elementary principles. The field, then, is vast and unbounded. We know not, to what yet unthought of heights the power of man over the agencies of nature may be carried. We only know, that the last half century has witnessed an amazingly accelerated progress in useful discoveries, and that at the present moment, science and art are acting together, with a new companionship, and with the most happy and striking results. The history of mechanical philosophy, is, of itself, a very interesting subject, and will doubtless be treated in this place fully, and methodically, by stated lecturers.

It is a part of the history of man, which, like that of his domestic habits and daily occupations, has been too unfrequently the subject of research; having been thrust aside by the more dazzling topics of war and political revolutions. We are not often conducted by historians within the houses or huts of our ancestors, as they were centuries ago, and made acquainted with their domestic utensils and domestic arrangements. We see too little, both of the conveniences and inconveniences of their daily and ordinary life. There are, indeed, rich materials for interesting details on these particulars, to be collected from the labors of Goguet and Beckmann, Henry and Turner; but, still, a thorough and well written history of those inventions in the mechanic arts, which are now commonly known, is a *desideratum* in literature.

Human sagacity, stimulated by human wants, seizes first on the nearest natural assistant. The power of his own arm, is an early lesson, among the studies of primitive man. This is animal strength; and from this he rises to the conception of employing, for his own use, the strength of other animals. A stone, impelled by the power of his arm, he finds will produce a greater effect, than the arm itself; this is a species of mechanical power. The effect results from a combination of the moving force with the gravity of a heavy body. The limb of a tree is a rude, but powerful instrument;

it is a lever. And the mechanical powers being all discovered, like other natural qualities, by induction, (I use the word as Bacon used it,) or experience, and not by any reasoning *a priori*, their progress has kept pace with the general civilisation and education of nations. The history of mechanical philosophy, while it strongly illustrates, in its general results, the force of the human mind, exhibits, in its details, most interesting pictures of ingenuity struggling with the conception of new combinations, and of deep, intense, and powerful thought, stretched to its utmost to find out, or deduce, the general principle from the indications of particular facts. We are now so far advanced beyond the age when the principal, leading, important mathematical discoveries were made, and they have become so much matter of common knowledge, that it is not easy to feel their importance, or be justly sensible what an epoch in the history of science each constituted. The half frantic exultation of Archimedes, when he had solved the problem respecting the crown of Hiero, was on an occasion and for a cause certainly well allowing very high joy. And so also was the duplication of the cube.

The altar of Apollo at Athens was a square block, or cube, and to double it required the duplication of the cube. This was a process involving an unascertained mathematical principle. It was quite natural, therefore, that it should be a traditional story, that by way of atoning for some affront to that god, the oracle commanded the Athenians to *double his altar;* an injunction, we know, which occupied the keen sagacity of the Greek geometricians for more than half a century, before they were able to obey it. It is to the great honor, however, of this inimitable people, the Greeks, a people whose genius seems to have been equally fitted for the investigations of science and the works of imagination, that the immortal Euclid, centuries before our era, composed his Elements of Geometry; a work which, for two thousand years, has been, and still continues to be, a text book for instruction in that science.

A history of mechanical philosophy, however, would not begin with Greece. There is a wonder beyond Greece. Higher up in the annals of mankind, nearer, far nearer, to the origin of our race, out of all reach of letters, beyond the sources of tradition, beyond all history, except what remains in the monuments of her own art, stands Egypt, the mother of nations! Egypt! Thebes! the Labyrinth! the Pyramids! Who shall explain the mysteries, which these names suggest? The Pyramids! Who can inform us, whether it was by mere numbers, and patience, and labor, aided perhaps by the simple lever, or if not, by what forgotten combination of power, by what now unknown machines, mass was thus aggregated to mass, and quarry piled on quarry, till solid granite seemed to cover the earth and reach the skies?

The ancients discovered many things, but they left many things also to be discovered; and this, as a general truth, is what our posterity, a thousand years hence, will be able to say, doubtless, when we and our generation shall be recorded also among the ancients. For, indeed, God seems to have proposed his material universe, as a standing, perpetual study to his intelligent creatures; where, ever

learning, they can yet never learn all; and if that material universe shall last till man shall have discovered all that is unknown, but which, by the progressive improvement of his faculties he is capable of knowing, it will remain through a duration beyond human measurement, and beyond human comprehension.

The ancients knew nothing of our present system of arithmetical notation; nothing of algebra, and of course nothing of the important application of algebra to geometry. They had not learned the use of logarithms, and were ignorant of fluxions. They had not attained to any just mode for the mensuration of the earth; a matter of great moment to astronomy, navigation, and other branches of useful knowledge. It is scarcely necessary to add, that they were ignorant of the great results which have followed the developement of the principle of gravitation.

In the useful and practical arts, many inventions and contrivances, to the production of which the degree of ancient knowledge would appear to us to have been adequate, and which seem quite obvious, are yet of late origin. The application of water, for example, to turn a mill, is a thing not known to have been accomplished at all in Greece, and is not supposed to have been attempted at Rome, till in or near the age of Augustus. The production of the same effect by wind, is a still later invention. It dates only in the seventh century of our era. The propulsion of the saw, by any other power than that of the arm, is treated as a novelty in England, so late as in the middle of the sixteenth century. The Bishop of Ely, Ambassador from the Queen of England to the Pope, says, "he saw, at Lyons, a saw-mill driven with an upright wheel, and the water that makes it go is gathered into a narrow trough, which delivereth the same water to the wheels. This wheel hath a piece of timber put to the axletree end, like the handle of a *brock*, (a hand organ,) and fastened to the end of the saw, which being turned with the force of water, hoisteth up and down the saw, that it continually eateth in, and the handle of the same is kept in a rigall of wood, from severing. Also the timber lieth, as it were upon a ladder, which is brought by little and little to the saw by another vice." From this description of the primitive power-saw, it would seem that it was probably fast only at one end, and that the brock and rigall performed the part of the arm, in the common use of the handsaw.

It must always have been a very considerable object for men to possess, or obtain, the power of raising water, otherwise than by mere manual labor. Yet nothing like the common suction pump has been found among rude nations. It has arrived at its present state only by slow and doubtful steps of improvement; and, indeed, in that present state, however obvious and unattractive, it is something of an abstruse and refined invention. It was unknown in China, until Europeans visited the "Celestial Empire;" and is still unknown in other parts of Asia, beyond the pale of European settlements, or the reach of European communication. The Greeks and Romans are supposed to have been ignorant of it, in the early times of their history; and it is usually said to have come from Alexan-

dria, where physical science was much cultivated by the Greek school, under the patronage of the Ptolemies.

These few and scattered historical notices, gentlemen, of important inventions, have been introduced only for the purpose of suggesting that there is much which is both curious and instructive in the history of mechanics; and that many things which to us, in our state of knowledge, seem so obvious as that we should think they would at once force themselves on men's adoption, have, nevertheless, been accomplished slowly and by painful efforts.

But if the history of the progress of the mechanical arts be interesting, still more so, doubtless, would be the exhibition of their present state, and a full display of the extent to which they are now carried. This field is much too wide even to be entered, on this occasion. The briefest outline even, would exceed its limits; and the whole subject will regularly fall to hands much more able to sustain it. The slightest glance, however, must convince us that mechanical power and mechanical skill, as they are now exhibited in Europe and America, mark an epoch in human history, worthy of all admiration. Machinery is made to perform what has formerly been the toil of human hands, to an extent that astonishes the most sanguine, with a degree of power to which no number of human arms is equal, and with such precision and exactness as almost to suggest the notion of reason and intelligence in the machines themselves. Every natural agent is put unrelentingly to the task. The winds work, the waters work, the elasticity of metals work: gravity is solicited into a thousand new forms of action: levers are multiplied upon levers: wheels revolve on the peripheries of other wheels; the saw and the plane are tortured into an accommodation to new uses, and, last of all, with inimitable power, and "with whirlwind sound," comes the potent agency of steam. In comparison with the past, what centuries of improvement has this single agent comprised, in the short compass of fifty years! Everywhere practicable, everywhere efficient, it has an arm a thousand times stronger than that of Hercules, and to which human ingenuity is capable of fitting a thousand times as many hands as belonged to Briareus. Steam is found, in triumphant operation, on the seas; and under the influence of its strong pro pulsion, the gallant ship,

> "Against the wind, against the tide
> Still *steadies*, with an upright keel."

It is on the rivers, and the boatman may repose on his oars; it is in highways, and begins to exert itself along the courses of land conveyance; it is at the bottom of mines, a thousand feet below the earth's surface; it is in the mill, and in the workshops of the trades. It rows, it pumps, it excavates, it carries, it draws, it lifts, it hammers, it spins, it weaves, it prints. It seems to say to men, at least to the class of artisans, "Leave off your manual labor, give over your bodily toil; bestow but your skill and reason to the directing of my power, and I will bear the toil,—with no muscle to grow weary, no nerve to relax, no breast to feel faintness." What further improvements may still be made in the use of this astonishing power, it is impos-

sible to know, and it were vain to conjecture. What we do know, is, that it has most essentially altered the face of affairs, and that no visible limit yet appears beyond which its progress is seen to be impossible. If its power were now to be annihilated, if we were to miss it on the water and in the mills, it would seem as if we were going back to rude ages.

This society, then, gentlemen, is instituted for the purpose of further and further applying science to the arts, at a time when there is much of science to be applied. Philosophy and the Mathematics have attained to high degrees, and still stretch their wings, like the Eagle. Chymistry, at the same time, acting in another direction, has made equally important discoveries, capable of a direct application to the purposes of life. Here, again, within so short a period as the lives of some of us, almost all that is known has been learned. And while there is this aggregate of science, already vast, but still rapidly increasing, offering itself to the ingenuity of mechanical contrivance, there is a corresponding demand for every work and invention of art,—produced by the wants of a rich, an enterprising and an elegant age. Associations like this, therefore, have materials to work upon, ends to work for, and encouragement to work.

It may not be improper to suggest, that not only are the general circumstances of the age favorable to such institutions as this, but that there seems a high degree of propriety that one or more should be established here, in the metropolis of New England. In no other part of the country, is there so great a concentration of mechanical operations. Events have given to New England the lead, in the great business of domestic manufactures. Her thickened population, her energetic free labor, her abundant falls of water, and various other causes, have led her citizens to embark, with great boldness, into extensive manufactures. The success of their establishments depends, of course, in no small degree, upon the perfection to which machinery may be carried. Improvement in this, therefore, instead of being left to chance or accident, is justly regarded as a fit subject of assiduous study. The attention of our community is, also, at the present moment, strongly attracted towards the construction of canals, railways, dry docks, and other important public works. Civil engineering is becoming a profession, offering honorable support and creditable distinction to such as may qualify themselves to discharge its duties. Another interesting fact is before us. New taste and a new excitement are evidently springing up in our vicinity in regard to an art, which, as it unites in a singular degree, utility and beauty, affords inviting encouragements to genius and skill. I mean Architecture. Architecture is military, naval, sacred, civil, or domestic. Naval architecture, certainly, is of the highest importance to a commercial and navigating people, to say nothing of its intimate and essential connexion, with the means of national defence. This science should not be regarded as having already reached its utmost perfection. It seems to have been sometime in a course of rapid advancement. The building, the rigging, the navigating of ships have, to every ones conviction, been subjects of great improvement within the last fifteen years. And where,

rather than in New England, may still further improvements be looked for? Where is ship building either a greater business, or pursued with more skill and eagerness?

In civil, sacred, and domestic architecture, present appearances authorise the strongest hopes of improvement. These hopes rest, among other things, on unambiguous indications of the growing prevalence of a just taste. The principles of architecture are founded in nature, or good sense, as much as the principles of epic poetry. The art constitutes a beautiful medium, between what belongs to mere fancy, and what belongs entirely to the exact sciences. In its forms and modifications, it admits of infinite variation, giving broad room for invention and genius; while, in its general principles, it is founded on that which long experience and the concurrent judgment of ages have ascertained to be generally pleasing. Certain relations, of parts to parts, have been satisfactory to all the cultivated generations of men. These relations constitute what is called *proportion*, and this is the great basis of architectural art. This established proportion is not to be *followed* merely because it is ancient, but because its use, and the pleasure which it has been found capable of giving to the mind, through the eye, in ancient times, and modern times, and all civilized times, prove that its principles are well founded, and just; in the same manner that the Iliad is proved, by the consent of all ages, to be a good poem.

Architecture, I have said, is an art that unites, in a singular manner, the useful and the beautiful. It is not to be inferred from this, that everything in architecture is beautiful, or is to be so esteemed, in exact proportion to its apparent utility. No more is meant, than that nothing which evidently thwarts utility can or ought to be accounted beautiful; because, in every work of art, the design is to be regarded, and what defeats that design, cannot be considered as well done. The French rhetoricians have a maxim, that in literary composition, "nothing is beautiful which is not true." They do not intend to say, that strict and literal truth is alone beautiful in poetry or oratory; but they mean that, that which grossly offends against probability, is not in good taste, in either. The same relation subsists between beauty and utility in architecture, as between truth and imagination in poetry. Utility is not to be obviously sacrificed to beauty, in the one case; truth and probability are not to be outraged for the cause of fiction and fancy, in the other. In the severer styles of architecture, beauty and utility approach, so as to be almost identical. Where utility is more strongly than ordinary the main design, the proportions which produce it, raise the sense or feeling of beauty, by a sort of reflection or deduction of the mind. It is said that ancient Rome had perhaps no finer specimens of the classic Doric, than were in the sewers which ran under her streets, and which were of course always to be covered from human observation: so true is it, that cultivated taste is always pleased with justness of proportion; and that design, seen to be accomplished, gives pleasure. The discovery and fast increasing use of a noble material, found in vast abundance, nearer to our cities than the Pentelican quarries to Athens, may well awaken, as they do, new attention to

architectural improvement. If this material be not entirely well suited to the elegant Ionic, or the rich Corinthian, it is yet fitted, beyond marble, beyond perhaps almost any other material, for the Doric, of which the appropriate character is strength, and for the Gothic, of which the appropriate character is grandeur.

It is not more than justice, perhaps, to our ancestors, to call the Gothic the English, classic architecture; for in England, probably, are its most distinguished specimens. As its leading characteristic is grandeur, its main use would seem to be sacred. It had its origin, indeed, in ecclesiastical architecture. Its evident design was to surpass the ancient orders, by the size of the structure and its far greater heights; to excite perceptions of beauty, by the branching traceries and the gorgeous tabernacles within; and to inspire religious awe and reverence by the lofty pointed arches;—the flying buttresses, the spires, and the pinnacles, springing from beneath, stretching upwards towards the heavens with the prayers of the worshippers. Architectural beauty having always a direct reference to utility, edifices, whether civil or sacred, must of course undergo different changes, in different places, on account of climate, and in different ages, on account of the different states of other arts, or different notions of convenience. The hypethral temple, for example, or temple without a roof, is not to be thought of in our latitudes; and the use of glass, a thing not now to be dispensed with, is also to be accommodated, as well as it may be, to the architectural structure. These necessary variations, and many more admissible ones, give room for improvements to an indefinite extent, without departing from the principles of true taste. May we not hope, then, to see our own city celebrated as the city of architectural excellence? May we not hope, to see our native granite reposing in the ever during strength of the Doric, or springing up in the grand and lofty Gothic, in forms which beauty and utility, the eye and the judgment, taste and devotion, shall unite to approve and to admire? But while we regard sacred and civil architecture as highly important, let us not forget that other branch, so essential to personal comfort and happiness,—domestic architecture, or common housebuilding. In ancient times, in all governments, and under despotic governments in all times, the convenience or gratification of the monarch, the government, or the public, has been allowed too often, to put aside considerations of personal and individual happiness. With us, different ideas happily prevail. With us, it is not the public, or the government, in its corporate character, that is the only object of regard. The public happiness is to be the aggregate of the happiness of individuals. Our system begins with the individual man. It begins with him when he leaves the cradle; and it proposes to instruct him in knowledge and in morals, to prepare him for his state of manhood: on his arrival at that state, to invest him with political rights, to protect him, in his property and pursuits, and in his family and social connexions; and thus to enable him to enjoy as an individual, moral, and rational being, what belongs to a moral and rational being. For the same reason, the arts are to be promoted for their general utility, as they effect the personal happiness and well being of the

individuals who compose the community. It would be adverse to the whole spirit of our system, that we should have gorgeous and expensive public buildings, if individuals were at the same time to live in houses of mud. Our public edifices are to be reared by the surplus of wealth, and the savings of labor, after the necessities and comforts of individuals are provided for; and not, like the Pyramids, by the unremitted toil of thousands of half starved slaves. Domestic architecture, therefore, as connected with individual comfort and happiness, is to hold a first place in the esteem of our artists. Let our citizens have houses cheap, but comfortable; not gaudy, but in good taste; not judged by the portion of earth which they cover, but by their symmetry, their fitness for use, and their durability.

Without farther reference to particular arts, with which the objects of this society have a close connexion, it may yet be added, generally, that this is a period of great activity, of industry, of enterprise in the various walks of life. It is a period, too, of growing wealth, and increasing prosperity. It is a time when men are fast multiplying, but when means are increasing still faster than men. An auspicious moment, then, it is, full of motive and encouragement, for the vigorous prosecution of those inquiries, which have for their object the discovery of farther and farther means of uniting the results of scientific research to the arts and business of life.

ARGUMENT

ON THE TRIAL OF JOHN F. KNAPP, FOR THE MURDER OF JOSEPH WHITE, ESQ. OF SALEM, IN THE COUNTY OF ESSEX, MASSACHUSETTS; ON THE NIGHT OF THE 6TH OF APRIL, 1830.

Mr. WHITE, a highly respectable and wealthy citizen of Salem, about eighty years of age, was found on the morning of the 7th of April, 1830, in his bed murdered, under such circumstances as to create a strong sensation in that town, and throughout the community.

Richard Crowninshield, George Crowninshield, Joseph J. Knapp, and John F. Knapp, were a few weeks after arrested on a charge of having perpetrated the murder, and committed for trial. Joseph J. Knapp, soon after, under the promise of favor from government, made a full confession of the crime, and the circumstances attending it. In a few days after this disclosure was made, Richard Crowninshield, who was supposed to have been the principal assassin, committed suicide.

A special session of the Supreme Court was ordered by the Legislature, for the trial of the Prisoners at Salem, in July. At that time, John F. Knapp was indicted as principal in the murder, and George Crowninshield and Joseph J. Knapp as accessories.

On account of the death of Chief Justice PARKER, which occurred on the 26th of July, the Court adjourned to Tuesday, the 3d day of August, when it proceeded in the trial of John F. Knapp. Joseph J. Knapp, being called upon, refused to testify, and the pledge of the Government was withdrawn.

At the request of the prosecuting officers of the Government, Mr. WEBSTER appeared as counsel and assisted in the trial.

Mr. DEXTER addressed the Jury on behalf of the Prisoner, and was succeeded by Mr. WEBSTER, in the following Speech:

I AM little accustomed, gentlemen, to the part which I am now attempting to perform. Hardly more than once or twice, has it happened to me to be concerned, on the side of the government, in any criminal prosecution whatever; and never, until the present occasion, in any case affecting life.

But I very much regret that it should have been thought necessary to suggest to you, that I am brought here to "hurry you against the law, and beyond the evidence." I hope I have too much regard for justice, and too much respect for my own character, to attempt either; and were I to make such attempt, I am sure, that in this court, nothing can be carried against the law, and that gentlemen, intelligent and just as you are, are not, by any power, to be hurried beyond the evidence. Though I could well have wished to shun

this occasion, I have not felt at liberty to withhold my professional assistance, when it is supposed that I might be in some degree useful, in investigating and discovering the truth, respecting this most extraordinary murder. It has seemed to be a duty, incumbent on me, as on every other citizen, to do my best, and my utmost, to bring to light the perpetrators of this crime. Against the prisoner at the bar, as an individual, I cannot have the slightest prejudice. I would not do him the smallest injury or injustice. But I do not affect to be indifferent to the discovery, and the punishment of this deep guilt. I cheerfully share in the opprobrium, how much soever it may be, which is cast on those who feel and manifest an anxious concern that all who had a part in planning, or a hand in executing this deed of midnight assassination, may be brought to answer for their enormous crime, at the bar of public justice. Gentlemen, it is a most extraordinary case. In some respects, it has hardly a precedent anywhere; certainly none in our New England history. This bloody drama exhibited no suddenly excited ungovernable rage. The actors in it were not surprised by any lion-like temptation springing upon their virtue, and overcoming it, before resistance could begin. Nor did they do the deed to glut savage vengeance, or satiate long settled and deadly hate. It was a cool, calculating, money-making murder.—It was all "hire and salary, not revenge." It was the weighing of money against life; the counting out of so many pieces of silver, against so many ounces of blood.

An aged man, without an enemy in the world, in his own house, and in his own bed, is made the victim of a butcherly murder, for mere pay.—Truly, here is a new lesson for painters and poets. Whoever shall hereafter draw the portrait of murder, if he will show it as it has been exhibited in an example, where such example was last to have been looked for, in the very bosom of our New England society, let him not give it the grim visage of Moloch, the brow knitted by revenge, the face black with settled hate, and the blood-shot eye emitting livid fires of malice. Let him draw, rather, a decorous, smoothfaced, bloodless demon; a picture in *repose*, rather than in *action;* not so much an example of human nature, in its depravity, and in its paroxysms of *crime*, as an infernal nature, a fiend, in the ordinary display and developement of his character.

The deed was executed with a degree of self-possession and steadiness, equal to the wickedness with which it was planned. The circumstances, now clearly in evidence, spread out the whole scene before us. Deep sleep had fallen on the destined victim, and on all beneath his roof. A healthful old man, to whom sleep was sweet, the first sound slumbers of the night held him in their soft but strong embrace. The assassin enters, through the window already prepared, into an unoccupied apartment.—With noiseless foot he paces the lonely hall, half lighted by the moon; he winds up the ascent of the stairs, and reaches the door of the chamber. Of this, he moves the lock, by soft and continued pressure, till it turns on its hinges without noise; and he enters, and beholds his victim before him. The room was uncommonly open to the admission of light. The face of the innocent sleeper was turned from the murderer, and the beams of the moon, resting on the gray locks of his aged temple,

showed him where to strike. The fatal blow is given! and the victim passes, without a struggle or a motion, from the repose of sleep to the repose of death! It is the assassin's purpose to make sure work; and he yet plies the dagger, though it was obvious that life had been destroyed by the blow of the bludgeon.—He even raises the aged arm, that he may not fail in his aim at the heart, and replaces it again over the wounds of the poniard! To finish the picture, he explores the wrist for the pulse! He feels for it, and ascertains that it beats no longer! It is accomplished. The deed is done. He retreats, retraces his steps to the window, passes out through it as he came in, and escapes. He has done the murder—no eye has seen him, no ear has heard him. The *secret* is his own, and it is safe!

Ah! gentlemen, that was a dreadful mistake. Such a secret can be safe nowhere. The whole creation of God has neither nook nor corner, where the guilty can bestow it, and say it is safe. Not to speak of that eye which glances through all disguises, and beholds everything, as in the splendor of noon,—such secrets of guilt are never safe from detection, even by men. True it is, generally speaking, that "murder will out." True it is, that Providence hath so ordained, and doth so govern things, that those who break the great law of heaven, by shedding man's blood, seldom succeed in avoiding discovery. Especially, in a case exciting so much attention as this, discovery must come, and will come, sooner or later. A thousand eyes turn at once to explore every man, everything, every circumstance, connected with the time and place; a thousand ears catch every whisper; a thousand excited minds intensely dwell on the scene, shedding all their light, and ready to kindle the slightest circumstance into a blaze of discovery. Meantime, the guilty soul cannot keep its own secret. It is false to itself; or rather it feels an irresistible impulse of conscience to be true to itself. It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed on by a torment, which it dares not acknowledge to God nor man. A vulture is devouring it, and it can ask no sympathy or assistance, either from heaven or earth. The secret which the murderer possesses soon comes to possess him; and, like the evil spirits of which we read, it overcomes him, and leads him whithersoever it will. He feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions, from without, begin to embarrass him, and the net of circumstance to entangle him, the fatal *secret* struggles with still greater violence to burst forth. It must be confessed, *it will be* confessed, there is no refuge from confession but suicide, and suicide is confession.

Much has been said, on this occasion, of the excitement which has existed, and still exists, and of the extraordinary measures taken to discover and punish the guilty. No doubt there has been, and is, much excitement, and strange indeed were it, had it been otherwise. Should not all the peaceable and well disposed naturally feel con-

cerned, and naturally exert themselves to bring to punishment the authors of this secret assassination? Was it a thing to be slept upon or forgotten? Did you, gentlemen, sleep quite as quietly in your beds after this murder as before? Was it not a case for rewards, for meetings, for committees, for the united efforts of all the good, to find out a band of murderous conspirators, of midnight ruffians, and to bring them to the bar of justice and law? If this be excitement, is it an unnatural, or an improper excitement?

It seems to me, gentlemen, that there are appearances of another feeling, of a very different nature and character, not very extensive I would hope, but still there is too much evidence of its existence. Such is human nature, that some persons lose their abhorrence of crime, in their admiration of its magnificent exhibitions. Ordinary vice is reprobated by them, but extraordinary guilt, exquisite wickedness, the high flights and poetry of crime, seize on the imagination, and lead them to forget the depths of the guilt, in admiration of the excellence of the performance, or the unequalled atrocity of the purpose. There are those in our day, who have made great use of this infirmity of our nature; and by means of it done infinite injury to the cause of good morals. They have affected not only the taste, but I fear also the principles, of the young, the heedless, and the imaginative, by the exhibition of interesting and beautiful monsters. They render depravity attractive, sometimes by the polish of its manners, and sometimes by its very extravagance; and study to show off crime under all the advantages of cleverness and dexterity. Gentlemen, this is an extraordinary murder—but it is still a murder. We are not to lose ourselves in wonder at its origin, or in gazing on its cool and skilful execution. We are to detect and to punish it; and while we proceed with caution against the prisoner, and are to be sure that we do not visit on his head the offences of others, we are yet to consider that we are dealing with a case of most atrocious crime, which has not the slightest circumstance about it to soften its enormity. It is murder, deliberate, concerted, malicious murder.

Although the interest in this case may have diminished by the repeated investigation of the facts; still, the additional labor which it imposes upon all concerned is not to be regretted, if it should result in removing all doubts of the guilt of the prisoner.

The learned counsel for the prisoner has said truly, that it is your individual duty to judge the prisoner,—that it is your individual duty to determine his guilt or innocence—and that you are to weigh the testimony with candor and fairness. But much at the same time has been said, which, although it would seem to have no distinct bearing on the trial, cannot be passed over without some notice.

A tone of complaint so peculiar has been indulged, as would almost lead us to doubt whether the prisoner at the bar, or the managers of this prosecution, are now on trial. Great pains have been taken to complain of the *manner* of the prosecution. We hear of getting up a case;—of setting in motion trains of machinery;—of foul testimony; of combinations to overwhelm the prisoner;—of private prosecutors;—that the prisoner is hunted, persecuted, driven to his trial;—that everybody is against him;—and various other com-

plaints, as if those who would bring to punishment the authors of this murder were almost as bad as they who committed it.

In the course of my whole life, I have never heard before, so much said about the particular counsel who happen to be employed; as if it were extraordinary, that other counsel than the usual officers of the government should be assisting in the conducting of a case on the part of the government. In one of the last capital trials in this county, that of Jackman for "the Goodridge robbery," (so called,) I remember that the learned head of the Suffolk Bar, Mr. Prescott, came down in aid of the officers of the government. This was regarded as neither strange nor improper. The counsel for the prisoner, in that case, contented themselves with answering his arguments, as far as they were able, instead of carping at his presence.

Complaint is made that rewards were offered, in this case, and temptations held out to obtain testimony. Are not rewards always offered, when great and secret offences are committed? Rewards were offered in the case to which I have alluded; and every other means taken to discover the offenders, that ingenuity, or the most persevering vigilance could suggest. The learned counsel have suffered their zeal to lead them into a strain of complaint, at the manner in which the perpetrators of this crime were detected, almost indicating that they regard it as a positive injury, to them, to have found out their guilt. Since no man witnessed it, since they do not now confess it, attempts to discover it are half esteemed as officious intermeddling, and impertinent inquiry.

It is said, that here even a committee of vigilance was appointed. This is a subject of reiterated remark. This committee are pointed at, as though they had been officiously intermeddling with the administration of justice. They are said to have been "laboring for months" against the prisoner. Gentlemen, what must we do in such a case? Are people to be dumb and still, through fear of overdoing? Is it come to this, that an effort cannot be made, a hand cannot be lifted to discover the guilty, without its being said, there is a combination to overwhelm innocence? Has the community lost all moral sense? Certainly, a community that would not be roused to action, upon an occasion such as this was, a community which should not deny sleep to their eyes, and slumber to their eyelids, till they had exhausted all the means of discovery and detection, must, indeed, be lost to all moral sense, and would scarcely deserve protection from the laws. The learned counsel have endeavoured to persuade you, that there exists a prejudice against the persons accused of this murder. They would have you understand that it is not confined to this vicinity alone;—but that even the Legislature have caught this spirit. That through the procurement of the gentleman, here styled private prosecutor, who is a member of the Senate, a special session of this court was appointed for the trial of these offenders. That the ordinary movements of the wheels of justice were too slow for the purposes devised.—But does not everybody see and know that it was matter of absolute necessity to have a special session of the court? When, or how could the prisoners have been tried without a special session? In the ordinary arrange-

ment of the courts, but one week, in a year, is allotted for the whole court to sit in this county. In the trial of all capital offences a majority of the court, at least, are required to be present. In the trial of the present case alone, three weeks have already been taken up. Without such special session, then, three years would not have been sufficient for the purpose. It is answer sufficient to all complaints on this subject, to say, that the law was drawn by the late chief justice himself, to enable the court to accomplish its duties; and to afford the persons accused an opportunity for trial without delay.

Again, it is said, that it was not thought of making Francis Knapp, the prisoner at the bar, a PRINCIPAL till after the death of Richard Crowninshield, jun.; that the present indictment is an afterthought—that "testimony was got up" for the occasion. It is not so. There is no authority for this suggestion. The case of the Knapps had not then been before the grand jury. The officers of the government did not know what the testimony would be against them. They could not therefore have determined what course they should pursue. They intended to arraign all as principals, who should appear to have been principals; and all as accessories, who should appear to have been accessories. All this could be known only when the evidence should be produced.

But the learned counsel for the defendant take a somewhat loftier flight still. They are more concerned, they assure us, for the law itself, than even for their client. Your decision, in this case, they say, will stand as a precedent. Gentlemen, we hope it will. We hope it will be a precedent, both of candor and intelligence, of fairness and of firmness; a precedent of good sense and honest purpose, pursuing their investigation discreetly, rejecting loose generalities, exploring all the circumstances, weighing each, in search of truth, and embracing and declaring the truth, when found.

It is said, that "laws are made, not for the punishment of the guilty, but for the protection of the innocent." This is not quite accurate perhaps, but if so, we hope they will be so administered as to give that protection. But who are the innocent, whom the law would protect? Gentlemen, Joseph White was innocent. They are innocent who having lived in the fear of God, through the day, wish to sleep in his peace through the night, in their own beds. The law is established, that those who live quietly, may sleep quietly; that they who do no harm, may feel none. The gentleman can think of none that are innocent, except the prisoner at the bar, not yet convicted. Is a proved conspirator to murder, innocent? Are the Crowninshields and the Knapps, innocent? What is innocence? How deep stained with blood,—how reckless in crime,—how deep in depravity, may it be, and yet remain innocence? The law is made, if we would speak with entire accuracy, to protect the innocent, by punishing the guilty. But there are those innocent, out of court as well as in;—innocent citizens not suspected of crime, as well as innocent prisoners at the bar.

The criminal law is not founded in a principle of vengeance. It does not punish, that it may inflict suffering. The humanity of the law feels and regrets, every pain it causes, every hour of restraint

it imposes, and more deeply still, every life it forfeits. But it uses evil, as the means of preventing greater evil. It seeks to deter from crime, by the example of punishment. This is its true, and only true main object. It restrains the liberty of the few offenders, that the many who do not offend, may enjoy their own liberty. It forfeits the life of the murderer, that other murders may not be committed. The law might open the jails, and at once set free all persons accused of offences, and it ought to do so, if it could be made certain that no other offences would hereafter be committed. Because, it punishes, not to satisfy any desire to inflict pain, but simply to prevent the repetition of crimes. When the guilty, therefore, are not punished, the law has, so far, failed of its purpose; the safety of the innocent is, so far, endangered. Every unpunished murder takes away something from the security of every man's life. And whenever a jury, through whimsical and ill-founded scruples, suffer the guilty to escape, they make themselves answerable for the augmented danger of the innocent.

We wish nothing to be strained against this defendant. Why then all this alarm? Why all this complaint against the manner in which the crime is discovered? The prisoner's counsel catch at supposed flaws of evidence, or bad character of witnesses, without meeting the case. Do they mean to deny the conspiracy? Do they mean to deny that the two Crowninshields and the two Knapps were conspirators? Why do they rail against Palmer, while they do not disprove, and hardly dispute the truth of any one fact sworn to by him? Instead of this, it is made matter of sentimentality, that Palmer has been prevailed upon to betray his bosom companions, and to violate the sanctity of friendship: again, I ask, why do they not meet the case? If the fact is out, why not meet it? Do they mean to deny that Capt. White is dead? One should have almost supposed even that, from some remarks that have been made. Do they mean to deny the conspiracy? Or, admitting a conspiracy, do they mean to deny only, that Frank Knapp, the prisoner at the bar, was abetting in the murder, being present, and so deny that he was a principal? If a conspiracy is proved, it bears closely upon every subsequent subject of inquiry. Why don't they come to the fact? Here the defence is wholly indistinct. The counsel neither take the ground, nor abandon it. They neither fly, nor light. They hover. But they must come to a closer mode of contest. They must meet the facts, and either deny or admit them. Had the prisoner at the bar, then, a knowledge of this conspiracy or not? This is the question. Instead of laying out their strength in complaining of the *manner* in which the deed is discovered,—of the extraordinary pains taken to bring the prisoner's guilt to light;—would it not be better to show there was no guilt? Would it not be better to show his innocence? They say, and they complain, that the community feel a great desire that he should be punished for his crimes;—would it not be better to convince you that he has committed no crime?

Gentlemen, let us now come to the case. Your first inquiry, on the evidence, will be,—was Capt. White murdered in pursuance of

a conspiracy, and was the defendant one of this conspiracy? If so, the second inquiry is, was he so connected with the murder itself as that he is liable to be convicted as a *principal*? The defendant is indicted as a *principal*. If not guilty *as such*, you cannot convict him. The indictment contains three distinct classes of counts. In the *first*, he is charged as having done the deed, with his own hand;—in the *second*, as an aider and abettor to Richard Crowninshield, jr. who did the deed;---in the *third*, as an aider and abettor to some person unknown. If you believe him guilty on either of these counts, or in either of these ways, you must convict him.

It may be proper to say, as a preliminary remark, that there are two extraordinary circumstances attending this trial. One is, that Richard Crowninshield, jr., the supposed immediate *perpetrator* of the murder, since his arrest, has committed suicide. He has gone to answer before a tribunal of perfect infallibility. The other is, that Joseph Knapp, the supposed origin and planner of the murder, having once made a full disclosure of the facts, under a promise of indemnity, is, nevertheless, not now a witness. Notwithstanding his disclosure, and his promise of indemnity, he now refuses to testify. He chooses to return to his original state, and now stands answerable himself, when the time shall come for his trial. These circumstances it is fit you should remember, in your investigation of the case.

Your decision may affect more than the life of this defendant. If he be not convicted as principal, no one can be. Nor can any one be convicted of a participation in the crime as accessory. The Knapps and George Crowninshield will be again on the community. This shows the importance of the duty you have to perform;—and to remind you of the degree of care and wisdom, necessary to be exercised in its performance. But certainly these considerations do not render the prisoner's guilt any clearer, nor enhance the weight of the evidence against him. No one desires you to regard consequences in that light. No one wishes anything to be strained, or too far pressed against the prisoner. Still, it is fit you should see the full importance of the duty devolved upon you. And now, gentlemen, in examining this evidence, let us begin at the beginning, and see first what we know independent of the disputed testimony. This is a case of circumstantial evidence. And these circumstances, we think, are full and satisfactory. The case mainly depends upon them, and it is common, that offences of this kind, must be proved in this way. Midnight assassins take no witnesses. The evidence of the *facts* relied on has been, somewhat sneeringly, denominated by the learned counsel, "*circumstantial stuff*," but, it is not such *stuff* as dreams are made of. Why does he not rend this *stuff*? Why does he not tear it away, with the crush of his hand. He dismisses it, a little too summarily. It shall be my business to examine this *stuff* and try its cohesion.

The letter from Palmer at Belfast, is that no more than flimsy *stuff*?

The fabricated letters, from Knapp to the committee, and Mr White, are they nothing but *stuff*?

The circumstance, that the housekeeper was away at the time the murder was committed, as it was agreed she would be, is that, too, a useless piece of the same *stuff*?

The facts, that the key of the chamber door was taken out and secreted; that the window was unbarred and unbolted; are these to be so slightly and so easily disposed of?

It is necessary, gentlemen, now to settle, at the commencement, the great question of a *conspiracy*. If there was none, or the defendant was not a party, then there is no evidence here to convict him. If there was a conspiracy, and he is proved to have been a party, then these two facts have a strong bearing on others and all the great points of inquiry. The defendant's counsel take no distinct ground, as I have already said, on this point, neither to admit, nor to deny. They choose to confine themselves to a hypothetical mode of speech. They say, supposing there *was* a conspiracy, *non sequitur*, that the prisoner is guilty, as *principal*. Be it so. But still, if there was a conspiracy, and if he was a conspirator, and helped to plan the murder, this may shed much light on the evidence, which goes to charge him with the execution of that plan.

We mean to make out the conspiracy; and that the defendant was a party to it; and then to draw all just inferences from these facts.

Let me ask your attention, then, in the first place, to those appearances, on the morning after the murder, which have a tendency to show, that it was done in pursuance of a preconcerted plan of operation. What are they? A man was found murdered in his bed.—No stranger had done the deed—no one unacquainted with the house had done it.—It was apparent, that somebody from within had opened, and somebody from without had entered.—There had been there, obviously and certainly, concert and cooperation. The inmates of the house were not alarmed when the murder was perpetrated. The assassin had entered, without any riot, or any violence. He had found the way prepared before him. The house had been previously opened. The window was unbarred, from within, and its fastening unscrewed. There was a lock on the door of the chamber, in which Mr. White slept, but the key was gone. It had been taken away, and secreted. The footsteps of the murderer were visible, out doors, tending toward the window. The plank by which he entered the window, still remained. The road he pursued had been thus prepared for him. The victim was slain, and the murderer had escaped. Everything indicated that somebody from *within* had cooperated with somebody from *without*. Everything proclaimed that some of the inmates, or somebody having access to the house, had had a hand in the murder. On the face of the circumstances, it was apparent, therefore, that this was a premeditated, concerted, conspired murder. Who then were the conspirators? If not now found out, we are still groping in the dark, and the whole tragedy is still a mystery.

If the Knapps and the Crowninshields were not the conspirators, in this murder, then there is a whole set of conspirators yet not discovered. Because, independent of the testimony of Palmer and Leighton, independent of all disputed evidence, we know, from uncontroverted facts, that this murder was, and must have been, the

result of concert and cooperation, between two or more. We know it was not done, without plan and deliberation; we see, that whoever entered the house, to strike the blow, was favored and aided by some one, who had been previously in the house, without suspicion, and who had prepared the way. This is concert, this is cooperation, this is conspiracy. If the Knapps and the Crowninshields, then, were not the conspirators, who were? Joseph Knapp had a motive to desire the death of Mr. White, and that motive has been shown.

He was connected by marriage in the family of Mr. White. His wife was the daughter of Mrs. Beckford, who was the only child of a sister of the deceased. The deceased was more than eighty years old, and he had no children.—His only heirs were nephews and neices.—He was supposed to be possessed of a very large fortune,—which would have descended, by law, to his several nephews and neices in equal shares, or, if there was a will, then according to the will. But as Capt. White had but two branches of heirs—the children of his brother Henry White, and of Mrs. Beckford—according to the common idea each of these branches would have shared one half of Mr. White's property.

This popular idea is not legally correct. But it is common, and very probably was entertained by the parties. According to this, Mrs Beckford, on Mr. White's death, without a will, would have been entitled to one half of Mr. White's ample fortune; and Joseph Knapp had married one of her three children. There was a will, and this will gave the bulk of the property to others; and we learn from Palmer that one part of the design was to destroy the will before the murder was committed. There had been a previous will, and that previous will was known or believed to have been more favorable than the other, to the Beckford family. So that by destroying the last will, and destroying the life of the testator at the same time, either the first and more favorable will would be set up, or the deceased would have no will, which would be, as was supposed, still more favorable. But the conspirators not having succeeded in obtaining and destroying the last will, though they accomplished the murder, but the last will being found in existence and safe, and that will bequeathing the mass of the property to others, it seemed, at the time, impossible for Joseph Knapp, as for any one else, indeed, but the principal devisee, to have any motive which should lead to the murder. The key which unlocks the whole mystery, is, the knowledge of the intention of the conspirators to steal the will. This is derived from Palmer, and it explains all. It solves the whole marvel. It shows the motive actuating those, against whom there is much evidence, but who, without the knowledge of this intention, were not seen to have had a motive. This intention is proved, as I have said, by Palmer; and it is so congruous with all the rest of the case, it agrees so well with all facts and circumstances, that no man could well withhold his belief, though the facts were stated by a still less credible witness. If one, desirous of opening a lock, turns over and tries a bunch of keys till he finds one that will open it, he naturally supposes he has found *the* key of *that* lock. So in explaining circumstances of evidence, which are apparently irrecon-

cilable, or unaccountable, if a fact be suggested, which at once accounts for all, and reconciles all, by whomsoever it may be stated, it is still difficult not to believe that such fact is the true fact belonging to the case. In this respect, Palmer's testimony is singularly confirmed. If he were false, then his ingenuity could not furnish us such clear exposition of strange appearing circumstances. Some truth, not before known, can alone do that.

When we look back, then, to the state of things immediately on the discovery of the murder, we see that suspicion would naturally turn at once, not to the heirs at law, but to those principally benefited by the will. They, and they alone, would be supposed or seem to have a direct object, for wishing Mr. White's life to be terminated. And strange as it may seem, we find counsel now insisting, that if no apology, it is yet mitigation of the atrocity of the Knapps' conduct, in attempting to charge this foul murder on Mr. White, the nephew and principal devisee, that public suspicion was already so directed! As if assassination of character were excusable, in proportion as circumstances may render it easy. Their endeavours, when they knew they were suspected themselves, to fix the charge on others, by foul means and by falsehood, are fair and strong proof of their own guilt. But more of that, hereafter.

The counsel say that they might safely admit, that Richard Crowninshield, jr. was the perpetrator of this murder.

But how could they safely admit that? If that were admitted, everything else would follow. For why should Richard Crowninshield, jr. kill Mr. White? He was not his heir, nor his devisee; nor was he his enemy. What could be his motive? If Richard Crowninshield, jr. killed Mr. White, he did it, at some one's procurement who himself had a motive. And who, having any motive, is shown to have had any intercourse with Richard Crowninshield, jr. but Joseph Knapp, and this, principally through the agency of the prisoner at the bar?—It is the infirmity, the distressing difficulty of the prisoner's case, that his counsel cannot and dare not admit what they yet cannot disprove and what all must believe. He who believes, on this evidence, that Richard Crowninshield, jr. was the immediate murderer, cannot doubt that both the Knapps were conspirators in that murder. The counsel, therefore, are wrong, I think, in saying they might safely admit this. The admission of so important, and so connected a fact, would render it impossible to contend further against the proof of the entire conspiracy, as we state it.

What, then, was this conspiracy? J. J. Knapp, jr. desirous of destroying the will, and of taking the life of the deceased, hired a ruffian, who with the aid of other ruffians, were to enter the house, and murder him, in his own bed.

As far back as January, this conspiracy began. Endicott testifies to a conversation with J. J. Knapp, at that time, in which Knapp told him that Capt. White had made a will, and given the principal part of his property to Stephen White. When asked how he knew, he said "black and white don't lie." When asked, if the will was not locked up, he said "there is such a thing as two keys to the same lock." And speaking of the then late illness of Capt. White, he said, that Stephen White would not have been sent for, if *he* had been there.

Hence it appears, that as early as January, Knapp had a knowledge of the will, and that he had access to it, by means of false keys. This knowledge of the will, and an intent to destroy it, appear also from Palmer's testimony---a fact disclosed to him by the other conspirators. He says, that he was informed of this by the Crowninshields on the 2d of April. But, then, it is said that Palmer is not to be credited; that by his own confession he is a felon; that he has been in the state prison in Maine; and above all, that he was an inmate and associate with these conspirators themselves. Let us admit these facts. Let us admit him to be as bad as they would represent him to be; still, in law, he is a competent witness. How else are the secret designs of the wicked to be proved, but by their wicked companions, to whom they have disclosed them? The government does not select its witnesses. The conspirators themselves have chosen Palmer. He was the confidant of the prisoners. The fact, however, does not depend on his testimony alone. It is corroborated by other proof; and, taken in connexion with the other circumstances, it has strong probability. In regard to the testimony of Palmer, generally,---it may be said, that it is less contradicted, in all parts of it, either by himself or others, than that of any other material witness, and that everything he has told, has been corroborated by other evidence, so far as it was susceptible of confirmation. An attempt has been made to impair his testimony, as to his being at the half-way house, on the night of the murder;---you have seen with what success. Mr. Babb is called to contradict him: you have seen how little he knows, and even that not certainly; for he, himself, is proved to have been in an error, by supposing him to have been at the half-way house on the evening of the 9th of April. At that time, Palmer is proved to have been at Dustin's in Danvers. If, then, Palmer, bad as he is, has disclosed the secrets of the conspiracy, and has told the truth---there is no reason why it should not be believed. Truth is truth, come whence it may.

The facts show, that this murder had been long in agitation, that it was not a new proposition, on the 2d of April; that it had been contemplated for five or six weeks before. R. Crowninshield was at Wenham in the latter part of March, as testified by Starrett. F. Knapp was at Danvers, in the latter part of February, as testified by Allen. R. Crowninshield inquired whether Capt. Knapp was about home, when at Wenham. The probability is, that they would open the case to Palmer, as a new project. There are other circumstances that show it to have been some weeks in agitation. Palmer's testimony as to the transactions on the 2d of April, is corroborated by Allen, and by Osborn's books. He says that F. Knapp came there in the afternoon, and again in the evening. So the book shows. He says that Capt. White had gone out to his farm on that day. So others prove. How could this fact, or these facts, have been known to Palmer, unless F. Knapp had brought the knowledge? and was it not the special object of this visit, to give information of this fact, that they might meet him and execute their purpose on his return from his farm? The letter of Palmer, written at Belfast, has intrinsic evidence of genuineness. It was mailed at

Belfast, May 13th. It states facts that he could not have known, unless his testimony be true. This letter was not an afterthought; it is a genuine narrative. In fact, it says, "I know the business your brother Frank was transacting on the 2d of April :" how could he have possibly known this, unless he had been there? The "$1000, that was to be paid ;" where could he have obtained this knowledge? The testimony of Endicott, of Palmer, and these facts, are to be taken together ; and they, most clearly, show, that the death of Capt. White must have been caused by *somebody interested* in putting an end to his life.

As to the testimony of Leighton. As far as manner of testifying goes, he is a bad witness :—but it does not follow from this that he is not to be believed. There are some strange things about him. It is strange, that he should make up a story against Capt. Knapp, the person with whom he lived ;—that he never voluntarily told anything : all that he has said is screwed out of him. The story could not have been invented by him ; his character for truth is unimpeached ; and he intimated to another witness, soon after the murder happened, that he knew something he should not tell. There is not the least contradiction in his testimony, though he gives a poor account of withholding it. He says that he was extremely *bothered* by those who questioned him. In the main story that he relates, he is universally consistent with himself: Some things are for him, and some against him. Examine the intrinsic probability of what he says. See if some allowance is not to be made for him, on account of his ignorance, with things of this kind. It is said to be extraordinary, that he should have heard just so much of the conversation and no more ; that he should have heard just what was necessary to be proved, and nothing else. Admit that this is extraordinary ; still, this does not prove it not true. It is extraordinary, that you twelve gentlemen should be called upon, out of all the men in the county, to decide this case : no one could have foretold this, three weeks since. It is extraordinary, that the first clue to this conspiracy, should have been derived from information given by the father of the prisoner at the bar. And in every case that comes to trial, there are many things extraordinary. The murder itself in this case is an extraordinary one ; but still we do not doubt its reality.

It is argued, that this conversation between Joseph and Frank, could not have been, as Leighton has testified, because they had been together for several hours before,—this subject must have been uppermost in their minds,—whereas this appears to have been the commencement of their conversation upon it. Now, this depends altogether upon the tone and manner of the expression ; upon the particular word in the sentence, which was emphatically spoken. If he had said, "When did you *see* Dick, Frank ?"—this would not seem to be the beginning of the conversation. With what emphasis it was uttered, it is not possible to learn ; and therefore nothing can be made of this argument. If this boy's testimony stood alone, it should be received with caution. And the same may be said of the testimony of Palmer. But they do not stand alone. They furnish a clue to numerous other circumstances, which, when

known, react in corroborating what would have been received with caution, until thus corroborated. How could Leighton have made up this conversation: "When did you see Dick?" "I saw him this morning." "When is he going to kill the old man." "I don't know." "Tell him if he don't do it soon, I won't pay him." Here is a vast amount, in few words. Had he wit enough to invent this? There is nothing so powerful as truth; and often nothing so strange. It is not even suggested that the story was made for him. There is nothing so extraordinary in the whole matter, as it would have been for this country boy to have invented this story.

The acts of the parties themselves, furnish strong presumption of their guilt. What was done on the receipt of the letter from Maine? This letter was signed by *Charles Grant, jr.* a person not known to either of the Knapps,—nor was it known to them, that any other person, beside the Crowninshields, knew of the conspiracy. This letter, by the accidental omission of the word *jr.* fell into the hands of the father, when intended for the son. The father carried it to Wenham where both the sons were. They both read it. Fix your eye steadily, on this part of the *circumstantial stuff*, which is in the case; and see what can be made of it. This was shown to the two brothers on Saturday, 15th of May. They, neither of them, knew Palmer. And if they had known him, they could not have known him to have been the writer of this letter. It was mysterious to them, how any one, at Belfast, could have had knowledge of this affair. Their conscious guilt prevented due circumspection. They did not see the bearing of its publication. They advised their father to carry it to the committee of vigilance, and it was so carried. On Sunday following, Joseph began to think there might be something in it. Perhaps, in the meantime, he had seen one of the Crowninshields. He was apprehensive, that they might be suspected; he was anxious to turn attention from their family. What course did he adopt to effect this? He addressed one letter, with a false name, to Mr. White, and another to the committee; and to complete the climax of his folly, he signed the letter addressed to the committee, "*Grant*"---the same name as that signed to the letter they then had from Belfast, addressed to Knapp. It was in the knowledge of the committee, that no person but the Knapps had seen this letter from Belfast; and that no other person knew its signature. It therefore must have been irresistibly plain, to them, that one of the Knapps must have been the writer of the letter they had received, charging the murder on Mr. White. Add to this, the fact of its having been dated at *Lynn*, and mailed at Salem, four days after it was dated, and who could doubt respecting it? Have you ever read, or known, of folly equal to this? Can you conceive of crime more odious and abominable? Merely to explain the apparent mysteries of the letter from Palmer, they excite the basest suspicions of a man, who, if they were innocent, they had no reason to believe guilty; and who, if they were guilty, they most certainly knew to be innocent. Could they have adopted a more direct method of exposing their own infamy? The letter to the committee has intrinsic marks of a knowledge of this transaction. It tells of the *time*, and the *manner* in which the murder was com-

mitted. Every line speaks the writer's condemnation. In attempting to divert attention from his family, and to charge the guilt upon another, he indelibly fixes it upon himself.

Joseph Knapp requested Allen to put these letters into the post-office, because, said he, "I wish to nip this silly affair in the bud." If this were not the order of an overruling Providence, I should say that it was the silliest piece of folly that was ever practised. Mark the destiny of crime. It is ever obliged to resort to such subterfuges; it trembles in the broad light; it betrays itself. in seeking concealment. He alone walks safely, who walks uprightly. Who, for a moment, can read these letters and doubt of J. Knapp's guilt? The constitution of nature is made to inform against him. There is no corner dark enough to conceal him. There is no turnpike broad enough, or smooth enough, for a man so guilty to walk in without stumbling. Every step proclaims his secret to every passenger. His own acts come out, to fix his guilt. In attempting to charge another with his *own crime*, he writes his *own confession*. To do away the effect of Palmer's letter, signed *Grant*—he writes his own letter and affixes to it the name of *Grant*. He writes in a disguised hand; but how could it happen, that the same *Grant* should be in Salem, that was at Belfast? This has brought the whole thing out. Evidently he did it, because he has adopted the same style. Evidently, he did it,—because he speaks of the price of blood, and of other circumstances connected with the murder, that no one but a conspirator could have known.

Palmer says he made a visit to the Crowninshields, on the 9th of April. George then asked him whether he had heard of the *murder*. Richard inquired, whether he had heard the *music at Salem*. They said that *they were suspected*, that a committee had been appointed to search houses; and that they had melted up the dagger, the day after the murder, because it would be a suspicious circumstance to have it found in their possession. Now this committee was not appointed, in fact, until Friday evening. But this proves nothing against Palmer, it does not prove that George *did not tell him so;* it only proves that he gave a false reason, for a fact. They had heard that they were suspected—how could they have heard this, unless it were from the whisperings of their own consciences? Surely this rumor was not then public.

About the 27th of April, another attempt is made by the Knapps to give a direction to public suspicion. They reported themselves to have been *robbed*, in passing from Salem to Wenham, near Wenham pond. They came to Salem, and stated the particulars of the adventure: they described persons,—their dress, size, and appearance, *who had been suspected* of the murder. They would have it understood, that the community was infested with a band of ruffians, and that *they*, themselves, were the particular objects of their vengeance. Now, this turns out to be all fictitious,—all false. Can you conceive of anything more enormous, any wickedness greater, than the circulation of such reports?—than the allegation of crimes, if committed, capital? If no such thing—then it reacts, with double force upon themselves, and goes very far to show their guilt. How did they conduct on this occasion? did they make hue and cry? Did

they give information that they had been assaulted, that night, at Wenham? No such thing. They rested quietly on that night; they waited to be called on for the particulars of their adventure; they made no attempt to arrest the offenders;—this was not their object. They were content to fill the thousand mouths of rumor,—to spread abroad false reports,—to divert the attention of the public from themselves; for they thought every man suspected them, because they knew they ought to be suspected.

The manner in which the compensation for this murder was paid, is a circumstance worthy of consideration. By examining the facts and dates, it will satisfactorily appear, that Joseph Knapp paid a sum of money to Richard Crowninshield in five franc pieces, on the 24th of April. On the 21st of April, Joseph Knapp received five hundred five franc pieces, as the proceeds of an adventure at sea. The remainder of this species of currency that came home in the vessel, was deposited in a bank at Salem. On Saturday, 24th of April, Frank and Richard rode to Wenham. They were there with Joseph an hour or more: appeared to be negotiating private business. Richard continued in the chaise: Joseph came to the chaise and conversed with him. These facts are proved by Hart, and Leighton, and by Osborn's books. On Saturday evening, about this time, Richard Crowninshield is proved to have been at Wenham, with another person whose appearance corresponds with Frank, by Lummus. Can any one doubt this being the same evening? What had Richard Crowninshield to do at Wenham, with Joseph, unless it were this business? He was there before the murder; he was there after the murder; he was there clandestinely, unwilling to be seen. If it were not upon this business, let it be told what it was for. Joseph Knapp could explain it; Frank Knapp might explain it. But they don't explain it; and the inference is against them.

Immediately after this, Richard passes five franc pieces; on the same evening, *one* to Lummus, *five* to Palmer; and near this time, George passes *three* or *four* in Salem. Here are nine of these pieces passed by them in four days; this is extraordinary. It is an unusual currency: in ordinary business, few men would pass nine such pieces in the course of a year. If they were not received in this way, why not explain how they came by them? Money was not so flush in their pockets, that they could not tell whence it came, if it honestly came there. It is extremely important to them to explain whence this money came, and they would do it if they could. If, then, the price of blood was paid at this time, in the presence and with the knowledge of this defendant; does not this prove him to have been connected with this conspiracy?

Observe, also, the effect on the mind of Richard, of Palmer's being arrested, and committed to prison; the various efforts he makes to discover the fact; the lowering, through the crevices of the rock, the pencil and paper for him to write upon; the sending two lines of poetry, with the request that he would return the corresponding lines; the shrill and peculiar whistle—the inimitable exclamations of "*Palmer! Palmer! Palmer!*"—all these things prove how great was his alarm; they corroborate Palmer's story, and tend to establish the conspiracy.

Joseph Knapp had a part to act in this matter; he must have opened the window, and secreted the key—he had free access to every part of the house; he was accustomed to visit there; he went in and out at his pleasure—he could do this without being suspected. He is proved to have been there the Saturday preceding.

If all these things, taken in connexion, do not prove that Capt. White was murdered in pursuance of a conspiracy—then the case is at an end.

Savary's testimony is wholly unexpected. He was called, for a different purpose. When asked who the person was, that he saw come out of Capt. White's yard between three and four o'clock in the morning,—he answered *Frank Knapp*. I am not clear this is not true. There may be many circumstances of importance connected with this, though we believe the murder to have been committed between ten and eleven o'clock. The letter to Dr. Barstow states it to have been done about *eleven o'clock*—it states it to have been done *with a blow on the head*, from a weapon loaded with lead. Here is too great a correspondence with the reality, not to have some meaning to it. Dr. Peirson was always of the opinion that the two classes of wounds were made with different instruments, and by different hands. It is possible, that one class was inflicted at one time, and the other at another. It is possible, that on the last visit, the pulse might not have entirely ceased to beat; and then the finishing stroke was given. It is said, when the body was discovered, some of the wounds weeped, while the others did not. They may have been inflicted from mere wantonness. It was known that Capt. White was accustomed to keep specie by him in his chamber; this perhaps may explain the last visit. It is proved, that this defendant was in the habit of retiring to bed, and leaving it afterwards, without the knowledge of his family; perhaps he did so on this occasion. We see no reason to doubt the fact; and it does not shake our belief that the murder was committed early in the night.

What are the probabilities as to the time of the murder? Mr. White was an aged man;—he usually retired to bed at about half past nine. He slept soundest, in the early part of the night; usually awoke in the middle and latter part; and his habits were perfectly well known. When would persons, with a knowledge of these facts, be most likely to approach him? most certainly, in the first hour of his sleep. This would be the safest time. If seen then, going to or from the house, the appearance would be least suspicious. The earlier hour would then have been most probably selected.

Gentlemen, I shall dwell no longer on the evidence which tends to prove that there was a conspiracy, and that the prisoner was a conspirator. All the circumstances concur to make out this point. Not only Palmer swears to it, in effect, and Leighton, but Allen mainly supports Palmer, and Osborn's books lend confirmation, so far as possible from such a source. Palmer is contradicted in nothing, either by any other witness, or any proved circumstance, or occurrence. Whatever could be expected to support him, does support him. All the evidence clearly manifests, I think, that there was a conspiracy; that it originated with J. Knapp; that defendant became a party to it, and was one of its conductors, from first to

last. One of the most powerful circumstances, is Palmer's letter from Belfast. The amount of this was, a direct charge on the Knapps, of the authorship of this murder. How did they treat this charge; like honest men, or like guilty men? We have seen how it was treated. J. Knapp fabricated letters, charging another person, and caused them to be put into the postoffice.

I shall now proceed on the supposition, that it is proved that there was a conspiracy to murder Mr. White, and that the prisoner was party to it.

The second, and the material inquiry is, *was the prisoner present, at the murder, aiding and abetting therein?*

This leads to the legal question in the case, what does the law mean, when it says, to charge him as a principal, "he must be present aiding and abetting in the murder."

In the language of the late chief justice, "it is not required that the abettor shall be actually upon the spot when the murder is committed, or even in sight of the more immediate perpetrator of the victim, to make him a principal. If he be at a distance, cooperating in the act, by watching to prevent relief, or to give an alarm, or to assist his confederate in escape, *having knowledge of the purpose and object of the assassin*,—this in the eye of the law is being present, aiding and abetting, so as to make him a principal in the murder."

"If he be at a *distance* cooperating"—this is not a *distance* to be measured by feet or rods; if the intent to lend aid, combine with a knowledge that the murder is to be committed, and the person so intending, be so situate that he can by any possibility lend this aid, in any manner, then he is *present* in legal contemplation. He need not lend any actual aid: to be ready to assist, is assisting.

There are two sorts of murder; the distinction between them, it is of essential importance to bear in mind.—1. Murder in an affray, or upon sudden and unexpected provocation :—2. Murder secretly, with a deliberate, predetermined intention to commit murder. Under the first class, the question usually is, whether the offence be murder or manslaughter, in the person who commits the deed. Under the second class, it is often a question whether others, than he who actually did the deed, were present aiding and assisting thereto. Offences of this kind ordinarily happen when there is no body present except those who go on the same design. If a riot should happen in the court house, and one should kill another—this may be murder, or it may not, according to the intention with which it was done; which is always matter of fact to be collected from the circumstances at the time. But in secret murders, premeditated and determined on, there can be no doubt of the murderous intention;—there can be no doubt, if a person be present, knowing a murder is to be done, of his concurring in the act. His being there is a proof of his intent to aid and abet; else, why is he there?

It has been contended, that proof must be given that the person accused did actually afford aid, did lend a hand in the murder itself;—and without this proof, although he may be near by, he may be presumed to be there for an innocent purpose; he may have crept silently there to hear the news, or from mere curiosity to see what was going on. Preposterous---absurd! Such an idea shocks

all common sense. A man is found to be a conspirator to do a murder; he has planned it; he has assisted in arranging the time, the place, and the means; and he is found, in the place, and at the time, and yet it is suggested that he might have been there, not for cooperation and concurrence, but from curiosity! Such an argument deserves no answer. It would be difficult to give it one, in decorous terms. Is it not to be taken for granted, that a man seeks to accomplish his own purposes? When he has planned a murder, and is present at its execution, is he there to forward, or to thwart, his own design? Is he there to assist, or there to prevent? But, "Curiosity!"—He may be there from mere "curiosity!" Curiosity, to witness the success of the execution of his own plan of murder!—The very walls of a court house ought not to stand—the plough share should run through the ground it stands on, where such an argument could find toleration.

It is not necessary that the abettor should actually lend a hand—that he should take a part in the act itself; if he be present, ready to assist—that is assisting. Some of the doctrines advanced would acquit the defendant, though he had gone to the bed chamber of the deceased,—though he had been standing by, when the assassin gave the blow. This is the argument we have heard to day. [The court here said, they did not so understand the argument of the counsel for defendant. Mr. Dexter said, "the intent and power alone must cooperate."] Mr. Webster continued, no doubt the law is, that being ready to assist is assisting, if he has the power to assist, in case of need. And it is so stated by Foster, who is a high authority. "If A. happeneth to be present at a murder, for instance, and taketh no part in it, nor endeavoureth to prevent it, nor apprehendeth the murderer, nor levyeth hue and cry after him, this strange behavior of his, though highly criminal, will not of itself render him either principal or accessory." "But if a fact amounting to murder should be committed in prosecution of some unlawful purpose, *though it were but a bare trespass*, to which A. in the case last stated had consented, and he had gone in order to give assistance, if need were, for carrying it into execution, this would have amounted to murder in him, and in every person present and joining with him." "If the fact was committed in prosecution of the original purpose *which was unlawful*, the whole party will be involved in the guilt of him who gave the blow. For in combinations of this kind, the mortal stroke, though given by one of the party, is considered in the eye of the law, and of sound reason too, as given by every individual present and abetting. The person actually giving the stroke is no more than the hand or instrument by which the others strike." The author in speaking of being present, means actual presence; not *actual* in opposition to *constructive*, for the law knows no such distinction. There is but one presence, and this is the situation from which aid, or supposed aid may be rendered. The law does not say where he is to go, or how near he is to go, but somewhere where he may give assistance, or where the perpetrator may suppose that he may be assisted by him. Suppose that he is acquainted with the design of the murderer, and has a knowledge of the time when it is to be carried into effect, and goes out with a

view to render assistance, if need be; why, then, even though the murderer does not know of this, the person so going out will be an abettor in the murder. It is contended that the prisoner at the bar, could not be a principal, he being in Brown street; because he could not there render assistance. And you are called upon to determine this case, according as you may be of opinion, whether Brown street was, or was not, a suitable, convenient, well chosen place, to aid in this murder. This is not the true question. The inquiry is, not whether you would have selected this place in preference to all others, or whether you would have selected it at all; if they chose it, why should we doubt about it? How do we know the use they intended to make of it, or the kind of aid that he was to afford by being there? The question for you to consider, is, did the defendant go into Brown street *in aid of this murder?* Did he go there by agreement, by appointment, with the perpetrator? If so, everything else follows. The main thing, indeed the only thing, is to inquire, whether he was in Brown street by appointment with Richard Crowninshield—it might be to keep general watch; to observe the lights, and advise as to time of access; to meet the prisoner on his return, to advise him as to his escape; to examine his clothes, to see if any marks of blood; to furnish exchange of clothes, or new disguise if necessary; to tell him through what streets he could safely retreat, or whether he could deposit the club in the place designed:—Or it might be without any distinct object; but merely to afford that encouragement which would be afforded, by Richard Crowninshield's consciousness that he was near. It is of no consequence whether, in your opinion, the place was well chosen or not, to afford aid;—if it was so chosen, if it was by appointment, that he was there, that is enough. Suppose Richard Crowninshield, when applied to to commit the murder, had said, "I won't do it unless there can be some one near by to favor my escape; I won't go unless you will stay in Brown street." Upon the gentleman's argument, he would not be an aider and abettor in the murder, because the place was not well chosen; though it is apparent, that the being in the place chosen, was a condition, without which, the murder would have never happened.

You are to consider the defendant as one in the league, in the combination to commit the murder. If he was there by appointment, with the perpetrator, he is an abetter. The concurrence of the perpetrator in his being there, is proved by the previous evidence of the conspiracy. If Richard Crowninshield, for any purpose whatsoever, made it a condition of the agreement, that Frank Knapp should stand as *backer*, then Frank Knapp was an aider and abettor: no matter what the aid was, of what sort it was, or degree—be it never so little. Even if it were to judge of the hour, when it was best to go, or to see when the lights were extinguished, or to give an alarm if any one approached. Who better calculated to judge of these things than the murderer himself? and if he so determined them, that is sufficient.

Now as to the facts: Frank Knapp knew that the murder was that night to be committed; he was one of the conspirators, he knew the object, he knew the time. He had that day been to Wenham to see Joseph, and probably to Danvers to see Richard Crowninshield, for

he kept his motions secret; he had that day hired a horse and chaise of Osborn, and attempted to conceal the purpose for which it was used,—he had intentionally left the *place* and the *price* blank on Osborn's books. He went to Wenham by the way of Danvers: he had been told the week before, to hasten Dick; he had seen the Crowninshields several times within a few days; he had a saddle horse the Saturday night before; he had seen Mrs. Beckford at Wenham, and knew she would not return that night. She had not been away before for six weeks, and probably would not soon be again. He had just come from there. Every day, for the week previous, he had visited one or other of these conspirators, save Sunday, and then probably he saw them in town. When he saw Joseph on the 6th, Joseph had prepared the house, and would naturally tell him of it; there were constant communications between them, daily and nightly visitation;—too much knowledge of these parties and this transaction, to leave a particle of doubt on the mind of any one, that Frank Knapp knew that the murder was to be done this night. The hour was come, and he knew it; if so, and he was in Brown street, without explaining why he was there, can the jury for a moment doubt, whether he was there to countenance, aid or support; or for curiosity alone;—or to learn how the wages of sin and death were earned by the perpetrator?

[Here Mr. Webster read the law from Hawkins. 1. Hawk. 204. Lib. 1. chap. 32. sec. 7.]

The perpetrator would derive courage, and strength, and confidence, from the knowledge of the fact that one of his associates was near by. If he was in Brown street, he could have been there for no other purpose. If there for this purpose, then he was, in the language of the law, *present*, aiding and abetting in the murder.

His interest lay in being somewhere else. If he had nothing to do with the murder, no part to act, why not stay at home? Why should he jeopard his own life, if it was not agreed that he should be there? He would not voluntarily go where the very place would probably cause him to swing if detected. He would not voluntarily assume the place of danger. His taking this place, proves that he went to give aid. His staying away would have made an alibi. If he had nothing to do with the murder, he would be at home, where he could prove his alibi. He knew he was in danger, because he was guilty of the conspiracy, and if he had nothing to do, would not expose himself to suspicion or detection.

Did the prisoner at the bar countenance this murder? Did he concur, or did he non-concur, in what the perpetrator was about to do? Would he have tried to shield him? Would he have furnished his cloak for protection? Would he have pointed out a safe way of retreat? As you would answer these questions, so you should answer the general question---whether he was there *consenting to the murder*, or whether he was there *a spectator only*?

One word more on this *presence*, called *constructive presence*. What aid is to be rendered? Where is the line to be drawn, between acting, and omitting to act? Suppose he had been in the house, suppose he had followed the perpetrator to the chamber, what could he have done? This was to be a murder by stealth;

it was to be a secret assassination. It was not their purpose to have an open combat; they were to approach their victim unawares, and silently give the fatal blow. But if he had been in the chamber, no one can doubt that he would have been an abettor; because of his presence, and ability to render services, if needed. What service could he have rendered, if there? Could he have helped him fly? Could he have aided the silence of his movements? Could he have facilitated his retreat, on the first alarm? Surely, this was a case, where there was more of safety in going alone, than with another; where company would only embarrass. Richard Crowninshield would prefer to go alone. He knew his errand too well. His nerves needed no collateral support. He was not the man to take with him a trembling companion. He would prefer to have his aid at a distance. He would not wish to be embarrassed by his presence. He would prefer to have him out of the house. He would prefer that he should be in Brown street. But, whether in the chamber, in the house, in the garden, or in the street, whatsoever is aiding in *immediate presence*, is aiding in *constructive presence*---anything that is aid in one case is aid in the other.

[Reads from Hawkins. 4. Hawk. 201. Lib. iv. chap. 29. sec. 8.]

If then the aid be anywhere, that emboldens the perpetrator—that affords him hope or confidence in his enterprise, it is the same as though he stood at his elbow with his sword drawn: his being there ready to act, with the power to act, that is what makes him an abettor. [Here Mr. Webster referred to Kelly's case, and Hyde's case, &c. cited by counsel for the defendant, and showed that they did not militate with the doctrine for which he contended. The difference is, in those cases there was open violence; this was a case of secret assassination. The aid must meet the occasion. Here no *acting* was necessary, but watching, concealment of escape, management.]

What are the *facts* in relation to this presence. Frank Knapp is proved a conspirator---proved to have known that the deed was now to be done. Is it not probable that he was in Brown street to concur in the murder? There were four conspirators; it was natural that some one of them would go with the perpetrator. Richard Crowninshield was to be the perpetrator; he was to give the blow. No evidence of any casting of the parts for the others. The defendant would probably be the man to take the second part. He was fond of exploits---he was accustomed to the use of sword canes, and dirks. If any aid was required, he was the man to give it. At least there is no evidence to the contrary of this.

Aid could not have been received from Joseph Knapp, or from George Crowninshield. Joseph Knapp was at Wenham, and took good care to prove that he was there. George Crowninshield has proved satisfactorily where he was; that he was in other company, such as it was, until 11 o'clock. This narrows the inquiry. This demands of the prisoner to show, that if he was not in this place, where he was? It calls on him loudly to show this, and to show it truly. If he could show it, he would do it. If he don't tell, and that truly, it is against him. The defence of an *alibi* is a double edged sword. He knew that he was in a situation, that he might

be called upon to account for himself. If he had had no particular appointment, or business to attend to, he would have taken care to have been able so to have accounted. He would have been out of town, or in some good company. Has he accounted for himself on that night, to your satisfaction?

The prisoner has attempted to prove an alibi, in two ways. In the first place, by four young men with whom he says he was in company on the evening of the murder, from seven o'clock, till near ten o'clock; this depends upon the *certainty of the night*. In the second place, by his family, from ten o'clock afterwards; this depends upon the *certainty of the time of the night*. These two classes of proof have no connexion with each other. One may be true, and the other false, or they may both be true, or both be false. I shall examine this testimony with some attention, because on a former trial, it made more impression on the minds of the court, than on my own mind. I think, when carefully sifted and compared, it will be found to have in it more of *plausibility* than *reality*.

Mr. Page testifies, that on the evening of the 6th of April, he was in company with Burchmore, Balch, and Forrester, and that he met the defendant about seven o'clock, near the Salem hotel; that he afterwards met him at Remond's, about nine o'clock, and that he was in company with him a considerable part of the evening. This young gentleman is a member of college, and says that he came in town the Saturday evening previous; that he is now able to say that it was the night of the murder, when he walked with Frank Knapp, from the recollection of the fact, that he called himself to an account, on the morning after the murder, as was natural for men to do when an extraordinary occurrence happens. Gentlemen, this kind of evidence is not satisfactory; general impressions as to time are not to be relied on. If I were called upon to state the particular day on which any witness testified in this cause, I could not do it. Every man will notice the same thing in his own mind. There is no one of these young men that could give any account of himself for any *other* day in the month of April. They are made to remember the fact, and then they think they remember the time. He has no means of knowing it was Tuesday more than any other time. He did not know it at first, he could not know it afterwards. He says he called himself to an account; this has no more to do with the murder, than with the man in the moon. Such testimony is not worthy to be relied on, in any forty shilling cause. What occasion had he to call himself to an account? Did he suppose, that he should be suspected? Had he any intimation of this conspiracy?

Suppose, gentlemen, you were either of you asked, where you were, or what you were doing, on the 15th day of June; you could not answer this question, without calling to mind some events to make it certain. Just as well may you remember on what you dined on, each day of the year past. Time is identical. Its subdivisions are all alike. No man knows one day from another, or one hour from another, but by some fact connected with it. Days and hours are not visible to the senses, nor to be apprehended and distinguished by the understanding. The flow of time is known only by something which makes it; and he who speaks of the date of occurrences

with nothing to guide his recollection, speaks at random, and is not to be relied on. This young gentleman remembers the facts, and occurrences---he knows nothing why they should not have happened on the evening of the sixth; but he knows no more. All the rest, is evidently conjecture or impression.

Mr. White informs you that he told him he could not tell what night it was. The first thoughts are all that are valuable in such case. They miss the mark by taking second aim.

Mr. Balch believes, but is not sure, that he was with Frank Knapp on the evening of the murder. He has given different accounts of the time. He has no means of making it certain. All he knows is, that it was some evening before Fast. But whether Monday, Tuesday or Saturday, he cannot tell.

Mr. Burchmore says, to the best of his belief, it was the evening of the murder. Afterwards he attempts to speak positively, from recollecting that he mentioned the circumstance to William Peirce, as he went to the Mineral Spring on Fast day. Last Monday morning, he told Col. Putnam he could not fix the time. This witness stands in a much worse plight than either of the others. It is difficult to reconcile all he has said, with any belief in the accuracy of his recollections.

Mr. Forrester does not speak with any certainty as to the night; and it is very certain, that he told Mr. Loring and others, that he did not know what night it was.

Now, what does the testimony of these four young men amount to? The only circumstance, by which they approximate to an identifying of the night is, that three of them say it was cloudy; they think their walk was either on Monday or Tuesday evening, and it is admitted that Monday evening was clear, whence they draw the inference that it must have been Tuesday.

But, fortunately, there is one *fact* disclosed in their testimony that settles the question. Balch says, that on the evening, whenever it was, that he saw the prisoner, the prisoner told him he was going out of town on horseback, for a distance of about twenty minutes ride, and that he was going to get a horse at Osborn's. This was about seven o'clock. At about nine, Balch says he saw the prisoner again, and was then told by him, that he had had his ride, and had returned. Now it appears by Osborn's books, that the prisoner had a saddle horse from his stable, not on Tuesday evening, the night of the murder, but on the Saturday evening previous. This fixes the time, about which these young men testify, and is a complete answer and refutation of the attempted *alibi*, on Tuesday evening.

I come now to speak of the testimony adduced by the defendant to explain where he was after ten o'clock on the night of the murder. This comes chiefly from members of the family; from his father and brothers.

It is agreed that the affidavit of the prisoner, should be received as evidence of what his brother, Samuel H. Knapp, would testify, if present. S. H. Knapp says, that about ten minutes past ten o'clock, his brother F. Knapp, on his way to bed, opened his chamber door, made some remarks, closed the door, and went to his chamber; and that he did not hear him leave it afterwards. How is this witness

able to fix the time at ten minutes past ten? There is no circumstance mentioned, by which he fixes it. He had been in bed, probably asleep, and was aroused from his sleep, by the opening of the door. Was he in a situation to speak of time with precision? Could he know, under such circumstances, whether it was ten minutes past ten, or ten minutes before eleven, when his brother spoke to him? What would be the natural result, in such a case? But we are not left to conjecture this result. We have positive testimony on this point. Mr. Webb tells you that Samuel told him on the 8th of June, "that he did not know what time his brother Frank came home, and that he was not at home when *he* went to bed." You will consider this testimony of Mr. Webb, as indorsed upon this affidavit; and with this indorsement upon it, you will give it its due weight. This statement was made to him after Frank was arrested.

I come to the testimony of the father. I find myself incapable of speaking of him or his testimony with severity. Unfortunate old man! Another Lear, in the conduct of his children; another Lear, I fear, in the effect of his distress upon his mind and understanding. He is brought here to testify, under circumstances that disarm severity, and call loudly for sympathy. Though it is impossible not to see that his story cannot be credited, yet I am not able to speak of him otherwise than in sorrow and grief. Unhappy father! he strives to remember, perhaps persuades himself that he does remember, that on the evening of the murder he was himself at home at ten o'clock. He thinks,—or seems to think, that his son came in, at about five minutes past ten. He fancies that he remembers his conversation; he thinks he spoke of bolting the door; he thinks he asked the time of night; he seems to remember his then going to his bed. Alas! these are but the swimming fancies of an agitated and distressed mind. Alas! they are but the dreams of hope,—its uncertain lights, flickering on the thick darkness of parental distress. Alas! the miserable father knows nothing, in reality, of all these things.

Mr. Shepard says that the first conversation he had with Mr. Knapp, was soon after the murder, and *before* the arrest of his sons. Mr. Knapp says it was *after* the arrest of his sons. His own fears led him to say to Mr. Shepard, that his "son Frank was at home that night; and so Phippen told him,—or as Phippen told him." Mr. Shepard says that he was struck with the remark at the time, that it made an unfavorable impression on his mind; he does not tell you what that impression was, but when you connect it with the previous inquiry he had made,—whether Frank had continued to associate with the Crowninshields?—and recollect that the Crowninshields were then known to be suspected of this crime, can you doubt what this impression was? can you doubt as to the fears he then had?

This poor old man tells you, that he was greatly perplexed at the time, that he found himself in embarrassed circumstances; that on this very night he was engaged in making an assignment of his property to his friend Mr. Shepard. If ever charity should furnish a mantle for error, it should be here. Imagination cannot picture a more deplorable, distressed condition.

The same general remarks may be applied to his conversation with Mr. Treadwell, as have been made upon that with Mr. Shepard. He told him that he believed Frank was at home about the usual time. In his conversations with either of these persons, he did not pretend to know, of his own knowledge, the time that he came home. He now tells you, positively, that he recollects the time, and that he so told Mr. Shepard. He is directly contradicted by both these witnesses, as respectable men as Salem affords.

This idea of alibi, is of recent origin. Would Samuel Knapp have gone to sea, if it were then thought of? His testimony, if true, was too important to be lost. If there be any truth in this part of the alibi, it is so near in point of time, that it cannot be relied on. The mere variation of half an hour would avoid it.—The mere variations of different time pieces would explain it.

Has the defendant proved where he was on that night? If you doubt about it—there is an end of it. The burden is upon him, to satisfy you beyond all reasonable doubt. Osborn's books, in connexion with what the young men state, are conclusive, I think, on this point. He has not, then, accounted for himself—he has attempted it, and has failed. I pray you to remember, gentlemen, that this is a case, in which the prisoner would, more than any other, be rationally able to account for himself, on the night of the murder, if he could do so. He was in the conspiracy, he knew the murder was then to be committed, and if he himself was to have no hand in its actual execution, he would of course, as matter of safety and precaution, be somewhere else, and be able to prove, afterwards, that he had been somewhere else. Having this motive to prove himself elsewhere, and the power to do it, if he were elsewhere, his failing in such proof must necessarily leave a very strong inference against him.

But, gentlemen, let us now consider what is the evidence produced on the part of the government to prove that John Francis Knapp, the prisoner at the bar, was in Brown street on the night of the murder. This is a point of vital importance in this cause. Unless this be made out, beyond reasonable doubt, the law of *presence* does not apply to the case. The government undertake to prove that he was present, aiding in the murder, by proving that he was in Brown street for this purpose. Now, what are the undoubted facts? They are, that two persons were seen in that street, at several times, during that evening, under suspicious circumstances;—under such circumstances as induced those who saw them, to watch their movements. Of this, there can be no doubt. Mirick saw a man standing at the post opposite his store, from fifteen minutes before nine, until twenty minutes after, dressed in a full frock coat, glazed cap, &c., in size and general appearance answering to the prisoner at the bar. This person was waiting there; and whenever any one approached him, he moved to and from the corner, as though he would avoid being suspected, or recognised. Afterwards, two persons were seen by Webster, walking in Howard street, with a slow, deliberate movement, that attracted his attention. This was about half past nine. One of these he took to be the prisoner at the bar—the other he did not know.

About half past ten, a person is seen sitting on the ropewalk steps, wrapped in a cloak. He drops his head when passed, to avoid being known. Shortly after, two persons are seen to meet in this street, without ceremony or salutation, and in a hurried manner to converse for a short time; then to separate, and run off with great speed. Now, on this same night, a gentleman is slain,—murdered in his bed,—his house being entered by stealth from without; and his house situated within 300 feet of this street. The windows of his chamber were in plain sight from this street;—a weapon of death is afterwards found in a place where these persons were seen to pass—in a retired place, around which they had been seen lingering. It is now known, that this murder was committed by a conspiracy of four persons, conspiring together for this purpose. No account is given who these suspected persons thus seen in Brown street and its neighbourhood were. Now, I ask, gentlemen, whether you or any man can doubt, that this murder was committed by the persons who were thus in and about Brown street? Can any person doubt that they were there for purposes connected with this murder? If not for this purpose, what were they there for? When there is a cause so near at hand, why wander into conjecture for an explanation? Common sense requires you to take the nearest adequate cause for a known effect. Who were these suspicious persons in Brown street? There was something extraordinary about them—something noticeable, and noticed at the time—something in their appearance that aroused suspicion. And a man is found the next morning murdered in the near vicinity.

Now, so long as no other account shall be given of those suspicious persons, so long the inference must remain irresistible, that they were the murderers. Let it be remembered, that it is already shown that this murder was the result of conspiracy, and of concert; let it be remembered, that the house, having been opened from within, was entered, by stealth, from without. Let it be remembered that Brown street, where these persons were repeatedly seen, under such suspicious circumstances, was a place from which every occupied room in Mr. White's house was clearly seen; let it be remembered, that the place, though thus very near to Mr. White's house, was a retired and lonely place; and let it be remembered that the instrument of death was afterwards found concealed, very near the same spot.

Must not every man come to the conclusion, that these persons, thus seen in Brown street, were the murderers? Every man's own judgment, I think, must satisfy him that this must be so. It is a plain deduction of common sense. It is a point, on which each one of you may reason like a Hale, or a Mansfield. The two occurrences explain each other. The murder shows why these persons were thus lurking, at that hour, in Brown street; and their lurking in Brown street, shows who committed the murder.

If, then, the persons in and about Brown street, were the plotters and executers of the murder of Capt. White, we know who they were, and you know that *there* is one of them.

This fearful concatenation of circumstances puts him to an account. He was a conspirator. He had entered into this plan of murder. The murder is committed, and he is known to have been within

three minutes walk of the place. He must account for himself. He has attempted this, and failed. Then, with all these general reasons to show he was actually in Brown street, and his failures in his ALIBI, let us see what is the direct proof of his being there. But first, let me ask, is it not very remarkable, that there is no attempt to show where Richard Crowninshield, jr. was on that night? We hear nothing of him. He was seen in none of his usual haunts, about the town. Yet, if he was the actual perpetrator of the murder, which nobody doubts, he was in the town, somewhere. Can you, therefore, entertain a doubt, that he was one of the persons seen in Brown street? And as to the prisoner, you will recollect, that since the testimony of the young men has failed to show where he was that evening, the last we hear or know of him, on the day preceding the murder, is, that at four o'clock P. M. he was at his brother's, in Wenham. He had left home, after dinner, in a manner doubtless designed to avoid observation, and had gone to Wenham, probably by way of Danvers. As we hear nothing of him, after four o'clock, P. M. for the remainder of the day and evening; as he was one of the conspirators; as Richard Crowninshield, jr. was another; as Richard Crowninshield, jr. was in town in the evening, and yet seen in no usual place of resort, the inference is very fair, that Richard Crowninshield, jr. and the prisoner were together, acting in execution of their conspiracy. Of the four conspirators, J. J. Knapp, jr. was at Wenham, and George Crowninshield has been accounted for; so that if the persons seen in Brown street, were the murderers, one of them must have been Richard Crowninshield, jr. and the other must have been the prisoner at the bar. Now, as to the proof of his identity with one of the persons seen in Brown street.

Mr. Mirick, a cautious witness, examined the person he saw, closely, in a light night, and says that he thinks the prisoner at the bar, is the same person; and that he should not hesitate at all, if he were seen in the same dress. His opinion is formed, partly from his own observation, and partly from the description of others. But this description turns out to be only in regard to the dress. It is said, that he is now more confident, than on the former trial. If he has varied in his testimony, make such allowance as you may think proper. I do not perceive any material variance. He thought him the same person, when he was first brought to court, and as he saw him get out of the chaise. This is one of the cases, in which a witness is permitted to give an opinion. This witness is as honest as yourselves—neither willing nor swift; but he says, he believes it was the man—"this is my opinion;" and this it is proper for him to give. If partly founded on what he has *heard*, then his opinion is not to be taken; but, if on what he *saw*, then you can have no better evidence. I lay no stress on similarity of dress. No man will ever be hanged by my voice on such evidence. But then it is proper to notice, that no inferences drawn from any *dissimilarity* of dress, can be given in the prisoner's favor; because, in fact, the person seen by Mirick was dressed like the prisoner.

The description of the person seen by Mirick answers to that of the prisoner at the bar. In regard to the supposed discrepancy of statements, before and now, there would be no end to such minute

inquiries. It would not be strange if witnesses should vary. I do not think much of slight shades of variation. If I believe the witness is honest, that is enough. If he has expressed himself more strongly now than then, this does not prove him false.

Peter E. Webster saw the prisoner at the bar, as he then thought, and still thinks, walking in Howard street at half past nine o'clock. He then thought it was Frank Knapp, and has not altered his opinion since. He knew him well; he had long known him. If he then thought it was he, this goes far to prove it. He observed him the more, as it was unusual to see gentlemen walk there at that hour. It was a retired, lonely street. Now, is there reasonable doubt that Mr. Webster did see him there that night? How can you have more proof than this? He judged by his walk, by his general appearance, by his deportment. We all judge in this manner. If you believe he is right, it goes a great way in this case. But then this person it is said had a cloak on, and that he could not, therefore, be the same person that Mirick saw. If we were treating of men that had no occasion to disguise themselves or their conduct, there might be something in this argument. But as it is, there is little in it. It may be presumed, that they would change their dress. This would help their disguise. What is easier than to throw off a cloak, and again put it on? Perhaps he was less fearful of being known when alone, than when with the perpetrator.

Mr. Southwick, swears all that a man can swear. He has the best means of judging that could be had at the time. He tells you that he left his father's house at half past ten o'clock, and as he passed to his own house in Brown street, he saw a man sitting on the steps of the ropewalk, &c. &c.---that he passed him three times, and each time he held down his head, so that he did not see his face. That the man had on a cloak, which was not wrapped around him, and a glazed cap. That he took the man to be Frank Knapp at the time; that when he went into his house, he told his wife that he thought it was Frank Knapp; that he knew him well, having known him from a boy. And his wife swears that he did so tell her at the time. What could mislead this witness at the time? He was not then suspecting Frank Knapp of anything. He could not then be influenced by any prejudice. If you believe that the witness saw Frank Knapp in this position, at this time, it proves the case. Whether you believe it or not, depends upon the credit of the witness. He swears it. If true, it is solid evidence. Mrs. Southwick supports her husband. Are they true? Are they worthy of belief? If he deserves the epithets applied to him, then he ought not to be believed. In this fact, they cannot be mistaken,—they are right, or they are perjured. As to his not speaking to Frank Knapp, that depends upon their intimacy. But a very good reason is, Frank chose to disguise himself. This makes nothing against his credit. But it is said that he should not be believed. And why? Because, it is said, he himself now tells you that when he testified before the grand jury at Ipswich, he did not then say that he thought the person he saw in Brown street was Frank Knapp, but that "the person was about the size of Selman." The means of attacking him, therefore, come from himself. If he is a false man, why should he tell truths against himself?

they rely on his veracity to prove that he is a liar. Before you can come to this conclusion, you will consider, whether all the circumstances are now known, that should have a bearing on this point. Suppose that when he was before the grand jury he was asked by the attorney this question, "was the person you saw in Brown street about the size of Selman?" and he answered, yes. This was all true. Suppose also that he expected to be inquired of further, and no further questions were put to him? Would it not be extremely hard to impute to him perjury for this? It is not uncommon for witnesses, to think that they have done all their duty, when they have answered the questions put to them? But suppose that we admit, that he did not then tell all he knew, this does not affect the *fact* at all; because he did tell, at the time, in the hearing of others, that the person he saw was Frank Knapp. There is not the slightest suggestion against the veracity or accuracy of Mrs. Southwick. Now, she swears positively, that her husband came into the house and told her that he had seen a person, on the ropewalk steps, and believed it was Frank Knapp.

It is said, that Mr. Southwick is contradicted, also, by Mr. Shillaber. I do not so understand Mr. Shillaber's testimony. I think what they both testify is reconcilable, and consistent. My learned brother said on a similar occasion, that there is more probability in such cases, that the persons hearing should misunderstand, than that the person speaking, should contradict himself. I think the same remarks applicable here.

You have all witnessed the uncertainty of testimony, when witnesses are called to testify what other witnesses said. Several respectable counsellors have been called on, on this occasion, to give testimony of that sort. They have, every one of them, given different versions. They all took minutes at the time, and without doubt intend to state the truth. But still they differ. Mr. Shillaber's version is different from everything that Southwick has stated elsewhere. But little reliance is to be placed on slight variations in testimony, unless they are manifestly intentional. I think that Mr. Shillaber must be satisfied that he did not rightly understand Mr. Southwick. I confess I misunderstood Mr. Shillaber on the former trial, if I now rightly understand him. I therefore, did not then recall Mr. Southwick to the stand. Mr. Southwick, as I read it, understood Mr. Shillaber as asking him about a person coming out of Newbury street, and whether, for aught he knew, it might not be Richard Crowninshield, jr. He answered that he could not tell. He did not understand Mr. Shillaber, as questioning him, as to the person, whom he saw sitting on the steps of the ropewalk. Southwick, on this trial, having heard Mr. Shillaber, has been recalled to the stand, and states that Mr. Shillaber entirely misunderstood him. This is certainly most probable, because the controlling fact in the case is not controverted; that is, that Southwick did tell his wife, at the very moment he entered his house, that he had seen a person on the ropewalk steps, whom he believed to be Frank Knapp. Nothing can prove, with more certainty than this, that Southwick, at the time, *thought* the person whom he thus saw, to be the prisoner at the bar.

Mr. Bray is an acknowledged accurate and intelligent witness.

He was highly complimented by my brother, on the former trial, although he now charges him with varying his testimony. What could be his motive? You will be slow in imputing to him any design of this kind. I deny altogether, that there is any contradiction.—There may be differences, but not contradiction. These arise from the difference in the questions put; the difference between *believing* and *knowing*. On the first trial, he said he did not *know* the person, and now says the same. Then we did not do all we had a right to do. We did not ask him who he *thought* it was. Now, when so asked, he says he *believes* it was the prisoner at the bar. If he had then been asked this question, he would have given the same answer. That he has expressed himself stronger, I admit; but he has not contradicted himself. He is more confident now; and that is all. A man may not assert a thing, and still not have any doubt upon it. Cannot every man see this distinction to be consistent? I leave him in that attitude; that only is the difference. On questions of identity, opinion is evidence. We may ask the witness, either if he *knew* who the person seen was, or who he *thinks* he was. And he may well answer, as Capt. Bray has answered, that he does not *know* who it was, but that he *thinks* it was the prisoner.

We have offered to produce witnesses to prove, that as soon as Bray saw the prisoner, he pronounced him the same person. We are not at liberty to call them to corroborate our own witness. How then could this fact of prisoner's being in Brown street, be better proved? If ten witnesses had testified to it, it would be no better. Two men, who knew him well, took it to be Frank Knapp, and one of them so said, when there was nothing to mislead them. Two others, that examined him closely, now swear to their opinion, that he is the man.

Miss Jaqueth, saw three persons pass by the ropewalk, several evenings before the murder. She saw one of them pointing towards Mr. White's house. She noticed that another had something which appeared to be like an instrument of music; that he put it behind him, and attempted to conceal it. Who were these persons? This was but a few steps from the place where this apparent instrument of music (of *music* such as Richard Crowninshield, jr. spoke of to Palmer) was afterwards found. These facts prove this a point of rendezvous for these parties. They show Brown street to have been the place for consultation, and observation; and to this purpose it was well suited.

Mr. Burns's testimony is also important. What was the defendant's object, in his private conversation with Burns? He knew that Burns was out that night; that he lived near Brown street, and that he had probably seen him; and he wished him to say nothing. He said to Burns, "if you saw any of your friends out that night, say nothing about it; my brother Jo. and I are your friends." This is plain proof, that he wished to say to him, if you saw me in Brown street that night, say nothing about it.

But it is said that Burns ought not to be believed, because he mistook the color of the dagger, and because he has varied in his description of it. These are slight circumstances, if his general character be good. To my mind they are of no importance. It is

for you to make what deduction you may think proper, on this account, from the weight of his evidence. His conversation with Burns, if Burns is believed, shows two things; first, that he desired Burns not to mention it, if he had seen him on the night of the murder; second, that he wished to fix the charge of murder on Mr. Stephen White. Both of these prove his own guilt.

I think you will be of opinion, gentlemen, that Brown street was a *probable place* for the conspirators to assemble, and for an aid to be. If we knew their whole plan, and if we were skilled to judge in such a case, then we could perhaps determine on this point better. But it is a retired place, and still commands a full view of the house ;—a lonely place, but still a place of observation. Not so lonely that a person would excite suspicion to be seen walking there in an ordinary manner ;—not so public as to be noticed by many. It is near enough to the scene of action in point of law. It was their point of *centrality*. The club was found near the spot—in a place provided for it—in a place that had been previously hunted out—in a concerted place of concealment. *Here was their point of rendezvous*—Here might the lights be seen—Here might an aid be secreted—Here was he within call—Here might he be aroused by the sound of the *whistle*—Here might he carry the weapon—Here might he receive the murderer, after the murder.

Then, gentlemen, the general question occurs, is it satisfactorily proved, by all these facts and circumstances, that the defendant was in and about Brown street, on the night of the murder ? Considering, that the murder was effected by a conspiracy;—considering, that he was one of the four conspirators;—considering, that two of the conspirators have accounted for themselves, on the night of the murder, and were not in Brown street;—considering that the prisoner does not account for himself, nor show where he was;—considering that Richard Crowninshield, the other conspirator, and the perpetrator, is not accounted for, nor shown to be elsewhere;—considering, that it is now past all doubt that two persons were seen in and about Brown street, at different times, lurking, avoiding observation, and exciting so much suspicion that the neighbours actually watched them;—considering, that if these persons, thus lurking in Brown street, at that hour, were not the murderers, it remains, to this day, wholly unknown who they were, or what their business was;—considering the testimony of Miss Jaqueth, and that the club was afterwards found near this place;—considering, finally, that Webster and Southwick saw these persons, and then took one of them for the defendant, and that Southwick then told his wife so, and that Bray and Mirick examined them closely, and now swear to their belief that the prisoner was one of them ; it is for you to say, putting these considerations together, whether you believe the prisoner was actually in Brown street, at the time of the murder.

By the counsel for the defendant, much stress has been laid upon the question, whether Brown street was a place in which aid could be given ? a place in which actual assistance could be rendered in this transaction ? This must be mainly decided, by their own opinion who selected the place; by what they thought at the time, according to their plan of operation.

If it was agreed that the prisoner should be there to assist, it is enough. If they thought the place proper for their purpose, according to their plan, it is sufficient.

Suppose we could prove expressly, that they agreed that Frank should be there, and he was there; and you should think it not a well chosen place, for aiding and abetting, must he be acquitted? No!—it is not what *I* think, or *you* think, of the appropriateness of the place—it is what *they* thought *at the time.*

If the prisoner was in Brown street, by appointment and agreement with the perpetrator, for the purpose of giving assistance, if assistance should be needed, it may safely be presumed that the place was suited to such assistance, as it was supposed by the parties might chance to become requisite.

If in Brown street, was he there by appointment? was he there to aid, if aid were necessary? was he there for, or against, the murderer? to concur, or to oppose? to favor or to thwart? Did the perpetrator know he was there—there waiting? If so, then it follows, he was there by appointment. He was at the post, half an hour; he was waiting for somebody. This proves *appointment—arrangement—previous* agreement; then it follows, he was there to aid,—to encourage,—to embolden the perpetrator, and that is enough. If he were in such a situation as to afford aid, or that he was relied upon for aid,—then he was aiding and abetting. It is enough, that the conspirator desired to have him there. Besides, it may be well said, that he could afford just as much aid there, as if he had been in Essex street—as if he had been standing even at the gate, or at the window. It was not an act of power against power that was to be done,—it was a secret act, to be done by stealth. The aid was to be placed in a position secure from observation:—It was important to the security of both, that he should be in a lonely place. Now, it is obvious, that there are many purposes for which he might be in Brown street.

1. Richard Crowninshield might have been secreted in the garden, and waiting for a signal.
2. Or he might be in Brown street, to advise him as to the time of making his entry into the house.
3. Or to favor his escape.
4. Or to see if the street was clear when he came out.
5. Or to conceal the weapon or the clothes.
6. To be ready for any other unforeseen contingency.

Richard Crowninshield lived in Danvers—he would retire the most secret way. Brown street is that way; if you find him there, can you doubt, why he was there!

If, gentlemen, the prisoner went into Brown street, by appointment with the perpetrator, to render aid or encouragement, in any of these ways, he was *present*, in legal contemplation, aiding and abetting, in this murder. It is not necessary that he should have done anything; it is enough, that he was ready to act, and in a place to act. If his being in Brown street, by appointment, at the time of the murder, emboldened the purpose, and encouraged the heart of the murderer, by the hope of instant aid, if aid should become neces-

sary, then, without doubt, he was present, aiding and abetting, and was a principal in the murder.

I now proceed, gentlemen, to the consideration of the testimony of Mr. Colman. Although this evidence bears on every material part of the cause, I have purposely avoided every comment on it, till the present moment, when I have done with the other evidence in the case. As to the admission of this evidence, there has been a great struggle, and its importance demanded it. The general rule of law is, that confessions are to be received as evidence. They are entitled to great or to little consideration, according to the circumstances under which they are made. Voluntary, deliberate confessions are the most important and satisfactory evidence. But confessions, hastily made, or improperly obtained, are entitled to little or no consideration. It is always to be inquired, whether they were purely voluntary, or were made under any undue influence of *hope* or *fear;* for, in general, if any influence were exerted on the mind of the person confessing, such confessions are not to be submitted to a jury.

Who is Mr. Colman? He is an intelligent, accurate, and cautious witness. A gentleman of high and well known character; and of unquestionable veracity. As a clergyman, highly respectable; as a man, of fair name and fame.

Why was Mr. Colman with the prisoner? Joseph J. Knapp was his parishioner; he was the head of a family, and had been married by Mr. Colman. The interests of his family were dear to him. He felt for their afflictions, and was anxious to alleviate their sufferings. He went from the purest and best of motives to visit Joseph Knapp. He came to save, not to destroy; to rescue, not to take away life. In this family, he thought there might be a chance to save one. It is a misconstruction of Mr. Colman's motives, at once the most strange and the most uncharitable, a perversion of all just views of his conduct and intentions, the most unaccountable, to represent him as acting, on this occasion, in hostility to any one, or as desirous of injuring or endangering any one. He has stated his own motives, and his own conduct, in a manner to command universal belief, and universal respect. For intelligence, for consistency, for accuracy, for caution, for candor, never did witness acquit himself better, or stand fairer. In all that he did, as a man, and all he has said, as a witness, he has shown himself worthy of entire regard.

Now, gentlemen, very important confessions made by the prisoner, are sworn to by Mr. Colman. They were made in the prisoner's cell, where Mr. Colman had gone with the prisoner's brother, N. P. Knapp. Whatever conversation took place, was in the presence of N. P. Knapp. Now, on the part of the prisoner, two things are asserted; first, that such inducements were suggested to the prisoner, in this interview, that any confessions by him ought not to be received. Second, that, in point of fact, he made no such confessions, as Mr. Colman testifies to, nor, indeed, any confessions at all. These two propositions are attempted to be supported by the testimony of N. P. Knapp. These two witnesses, Mr. Colman and N. P. Knapp, differ entirely. There is no possibility of reconciling them. No charity can cover both. One or the other has sworn falsely. If N.

P. Knapp be believed, Mr. Colman's testimony must be wholly disregarded. It is, then, a question of credit, a question of belief, between the two witnesses. As you decide between these, so you will decide on all this part of the case.

Mr. Colman has given you a plain narrative, a consistent account, and has uniformly stated the same things. He is not contradicted by anything in the case, except Phippen Knapp. He is influenced as far as we can see by no bias, or prejudice, any more than other men, except so far as his character is now at stake. He has feelings on this point, doubtless, and ought to have. If what he has stated be not true, I cannot see any ground for his escape. If he be a true man, he must have heard what he testifies. No treachery of memory, brings to memory things that never took place. There is no reconciling his evidence with good intention, if the facts are not as he states them. He is on trial, as to his veracity.

The relation in which the other witness stands, deserves your careful consideration. He is a member of the family. He has the lives of two brothers depending, as he may think, on the effect of his evidence;—depending, on every word he speaks. I hope he has not another responsibility, resting upon him. By the advice of a friend, and that friend Mr. Colman, J. Knapp made a full and free confession, and obtained a promise of pardon. He has since, as you know, probably by the advice of other friends, retracted that confession, and rejected the offered pardon. Events will show, who of these friends and advisers, advised him best, and befriended him most. In the meantime, if this brother, the witness, be one of these advisers, and advised the retraction, he has, most emphatically, the lives of his brothers, resting upon his evidence, and upon his conduct. Compare the situation of these two witnesses. Do you not see mighty motive enough on the one side, and want of all motive on the other? I would gladly find an apology for that witness, in his agonized feelings,—in his distressed situation;—in the agitation of that hour, or of this. I would gladly impute it to error, or to want of recollection, to confusion of mind, or disturbance of feeling.—I would gladly impute to any pardonable source, that which cannot be reconciled to facts, and to truth; but, even in a case calling for so much sympathy, justice must yet prevail, and we must come to the conclu sion, however reluctantly, which that demands from us.

It is said, Phippen Knapp was probably correct, because he knew he should be called as a witness. Witness—to what? When he says there was no confession, what could he expect to bear witness of? But I do not put it on the ground that he did not hear; I am compelled to put it on the other ground—that he did hear, and does not now truly tell what he heard.

If Mr. Colman were out of the case, there are other reasons why the story of Phippen Knapp should not be believed. It has in it inherent improbabilities. It is unnatural, and inconsistent with the accompanying circumstances. He tells you that they went "to the cell of Frank, to see if he had any objection to taking a trial, and suffering his brother to accept the offer of pardon:" in other words, to obtain Frank's consent to Joseph's making a confession; and in case this consent was not obtained, that the pardon would be offered

to Frank, &c. Did they bandy about the chance of life, between these two, in this way? Did Mr. Colman, after having given this pledge to Joseph, after having received a disclosure from Joseph, go to the cell of Frank for such a purpose as this? It is impossible; it cannot be so.

Again: We know that Mr. Colman found the club the next day; that he went directly to the place of deposit, and found it at the first attempt,—exactly where he says he had been informed it was. Now Phippen Knapp says, that Frank had stated nothing respecting the club, that it was not mentioned in that conversation. He says, also, that he was present in the cell of Joseph all the time that Mr. Colman was there, that he believes he heard all that was said in Joseph's cell; and that he did not himself know where the club was, and never had known where it was, until he heard it stated in court. Now, it is certain, that Mr. Colman says, he did not learn the particular place of deposit of the club from Joseph; that he only learned from him that it was deposited under the steps of the Howard street meeting-house, without defining the particular steps. It is certain, also, that he had more knowledge of the position of the club, than this—else how could he have placed his hand on it so readily?—and where else could he have obtained this knowledge, except from Frank? [Here Mr. Dexter said that Mr. Colman had had other interviews with Joseph, and might have derived the information from him at previous visits. Mr. Webster replied, that Mr. Colman had testified that he learned nothing in relation to the club until this visit. Mr. Dexter, denied there being any such testimony. Mr. Colman's evidence was then read from the notes of the judges, and several other persons, and Mr. Webster then proceeded.]—My point is, to show that Phippen Knapp's story is not true, is not consistent with itself. That taking it for granted, as he says, that he heard all that was said to Mr. Colman in both cells, by Joseph, and by Frank; and that Joseph did not state particularly where the club was deposited; and that he knew as much about the place of deposit of the club, as Mr. Colman knew; why then, Mr. Colman must either have been miraculously informed respecting the club, or Phippen Knapp has not told you the whole truth. There is no reconciling this, without supposing Mr. Colman has misrepresented what took place in Joseph's cell, as well as what took place in Frank's cell.

Again: Phippen Knapp is directly contradicted by Mr. Wheatland. Mr. Wheatland tells the same story as coming from Phippen Knapp, as Mr. Colman now tells. Here there are two against one. Phippen Knapp says that Frank made no confessions, and that he said he had none to make. In this he is contradicted by Wheatland. He, Phippen Knapp, told Wheatland, that Mr. Colman did ask Frank some questions, and that Frank answered them. He told him also what these answers were. Wheatland does not recollect the questions or answers, but recollects his reply; which was, "Is not this *premature*? I think this answer is sufficient to make Frank a principal." Here Phippen Knapp opposes himself to Wheatland, as well as to Mr. Colman. Do you believe Phippen Knapp, against these two respectable witnesses—or them against him?

Is not Mr. Colman's testimony credible, natural, and proper? To judge of this, you must go back to that scene.

The murder had been committed; the two Knapps were now arrested; four persons were already in gaol supposed to be concerned in it—the Crowninshields and Selman and Chase. Another person at the eastward was supposed to be in the plot; it was important to learn the facts. To do this, some one of those suspected must be admitted to turn states' witness. The contest was, *who should have this privilege?* It was understood that it was about to be offered to Palmer, then in Maine: there was no good reason why he should have the preference. Mr. Colman felt interested for the family of the Knapps, and particularly for Joseph. He was a young man who had hitherto sustained a fair standing in society; he was a husband. Mr. Colman was particularly intimate with his family. With these views he went to the prison. He believed that he might safely converse with the prisoner, because he thought confessions made to a clergyman were sacred, and that he could not be called upon to disclose them. He went, the first time, in the morning, and was requested to come again. He went again at three o'clock; and was requested to call again at five o'clock. In the meantime he saw the father and Phippen, and they wished he would not go again, because it would be said the prisoners were making confession. He said he had engaged to go again at five o'clock; but would not, if Phippen would excuse him to Joseph. Phippen engaged to do this, and to meet him at his office at five o'clock. Mr. Colman went to the office at the time, and waited; but as Phippen was not there, he walked down street and saw him coming from the gaol. He met him, and while in conversation, near the church, he saw Mrs. Beckford and Mrs. Knapp, going in a chaise towards the gaol. He hastened to meet them, as he thought it not proper for them to go in at that time. While conversing with them near the gaol, he received two distinct messages from Joseph, that he wished to see him. He thought it proper to go: he then went to Joseph's cell, and while there it was that the disclosures were made. Before Joseph had finished his statement, Phippen came to the door; he was soon after admitted. A short interval ensued, and they went together to the cell of Frank. Mr. Colman went in by invitation of Phippen: he had come directly from the cell of Joseph, where he had for the first time learned the incidents of the tragedy. He was incredulous as to some of the facts which he had learned, they were so different from his previous impressions. He was desirous of knowing whether he could place confidence in what Joseph had told him—he therefore put the questions to Frank, as he has testified before you; in answer to which, Frank Knapp informed him,

1. "That the murder took place between ten and eleven o'clock."
2. "That Richard Crowninshield was alone in the house."
3. "That he, Frank Knapp, went home afterwards."
4. "That the club was deposited under the steps of the Howard street meeting-house, and under the part nearest the burying ground, in a rat hole, &c."
5. "That the dagger or daggers had been worked up at the factory."

It is said that these five answers just fit the case; that they are just what was wanted, and neither more or less. True, they are, but the reason is, because truth always fits: truth is always congruous, and agrees with itself. Every truth in the universe agrees with every other truth in the universe; whereas falsehoods not only disagree with truths, but usually quarrel among themselves. Surely Mr. Colman is influenced by no bias—no prejudice; he has no feelings to warp him—except now, he is contradicted, he may feel an interest to be believed.

If you believe Mr. Colman, then the evidence is fairly in the case.

I shall now proceed on the ground that you do believe Mr. Colman.

When told that Joseph had determined to confess, the defendant said,---"It is hard, or unfair, that Joseph should have the benefit of confessing, since the thing was done for his benefit." What thing was done for his benefit? Does not this carry an implication of the guilt of the defendant? Does it not show that he had a knowledge of the object, and history of the murder?

The defendant said, "he told Joseph when he proposed it, that it was a silly business, and would get us into trouble." He knew, then, what this business was; he knew that Joseph proposed it, and that he agreed to it, else he could not get *us* into trouble; he understood its bearing, and its consequences. Thus much was said under circumstances, that make it clearly evidence against him, before there is any pretence of an inducement held out. And does not this prove him to have had a knowledge of the conspiracy?

He knew the daggers had been destroyed, and he knew who committed the murder. How could he have innocently known these facts? Why, if by Richard's story, this shows him guilty of a knowledge of the murder, and of the conspiracy. More than all, he knew *when* the deed was done, and that *he* went home *afterwards*. This shows his participation in that deed. "Went home afterwards"—home,*from what scene?*---home,*from what fact?* --home,*from what transaction?*---home,*from what place?* This confirms the supposition that the prisoner was in Brown street for the purposes ascribed to him. These questions were directly put, and directly answered. He does not intimate that he received the information from another. Now, if he knows the time, and went home afterwards, and does not excuse himself,---is not this an admission that he had a hand in this murder? Already proved to be a conspirator in the murder, he now confesses that he knew who did it---at what time it was done, was himself out of his own house at the time, and went home afterwards. Is not this conclusive, if not explained? Then comes the club. He told where it was. This is like possession of stolen goods. He is charged with the guilty knowledge of this concealment. He must *show*, not *say*, how he came by this knowledge. If a man be found with stolen goods, he must *prove* how he came by them. The place of deposit of the club was premeditated and selected, and he knew where it was.

Joseph Knapp was an accessory, and accessory only; he knew only what was told him. But the prisoner knew the particular spot in

which the club might be found. This shows his knowledge something more, than that of an accessory.

This presumption must be rebutted by evidence, or it stands strong against him. He has too much knowledge of this transaction, to have come innocently by it. It must stand against him until he explains it.

This testimony of Mr. Colman is represented as new matter, and therefore an attempt has been made to excite a prejudice against it. It is not so. How little is there in it, after all, that did not appear from other sources? It is mainly confirmatory. Compare what you learn from this confession, with what you before knew:—

As to its being proposed by Joseph—was not that true?

As to Richard's being alone, &c. in the house—was not that true?

As to the daggers—was not that true?

As to the time of the murder—was not that true?

As to his being out that night—was not that true?

As to his returning afterwards—was not that true?

As to the club—was not that true?

So this information confirms what was known before, and fully confirms it.

One word, as to the interview between Mr. Colman and Phippen Knapp on the turnpike. It is said that Mr. Colman's conduct in this matter, is inconsistent with his testimony. There does not appear to me to be any inconsistency. He tells you that his object was to save Joseph, and to hurt no one; and least of all the prisoner at the bar. He had, probably, told Mr. White, the substance of what he heard at the prison. He had probably told him that Frank *confirmed* what Joseph had *confessed*. He was unwilling to be the instrument of harm to Frank. He therefore, at the request of Phippen Knapp, wrote a note to Mr. White, requesting him to consider Joseph as authority for the information he had received. He tells you that this is the only thing he has to regret; as it may seem to be an evasion,—as he doubts whether it was entirely correct. If it was an evasion, if it was a deviation, if it was an error, it was an error of mercy—an error of kindness; an error that proves he had no hostility to the prisoner at the bar. It does not in the least vary his testimony, or affect its correctness. Gentlemen, I look on the evidence of Mr. Colman as highly important; not as bringing into the cause new facts, but as confirming, in a very satisfactory manner, other evidence. It is incredible, that he can be false, and that he is seeking the prisoner's life, through false swearing. If he is true, it is incredible that the prisoner can be innocent.

Gentlemen, I have gone through with the evidence in this case, and have endeavoured to state it plainly and fairly, before you. I think there are conclusions to be drawn from it, which you cannot doubt. I think you cannot doubt, that there was a conspiracy formed for the purpose of committing this murder, and who the conspirators were.

That you cannot doubt, that the Crowninshields and the Knapps, were the parties in this conspiracy.

That you cannot doubt, that the prisoner at the bar knew that the murder was to be done on the night of the 6th of April.

That you cannot doubt, that the murderers of Capt. White were the suspicious persons seen in and about Brown street on that night.

That you cannot doubt, that Richard Crowninshield was the perpetrator of that crime.

That you cannot doubt, that the prisoner at the bar was in Brown street on that night.

If there, then it must be by agreement---to countenance, to aid the perpetrator. And if so, then he is guilty as PRINCIPAL.

Gentlemen,—Your whole concern should be to do your duty, and leave consequences to take care of themselves. You will receive the law from the court. Your verdict, it is true, may endanger the prisoner's life; but then, it is to save other lives. If the prisoner's guilt has been shown and proved, beyond all reasonable doubt, you will convict him. If such reasonable doubts of guilt still remain, you will acquit him. You are the judges of the whole case. You owe a duty to the public, as well as to the prisoner at the bar. You cannot presume to be wiser than the law. Your duty is a plain, straight forward one. Doubtless, we would all judge him in mercy. Towards him, as an individual, the law inculcates no hostility;—but towards him, if proved to be a murderer, the law, and the oaths you have taken, and public justice, demand that you do your duty.

With consciences satisfied with the discharge of duty, no consequences can harm you. There is no evil that we cannot either face or fly from, but the consciousness of duty disregarded.

A sense of duty pursues us ever. It is omnipresent, like the Deity. If we take to ourselves the wings of the morning and dwell in the utmost parts of the seas, duty performed, or duty violated, is still with us, for our happiness, or our misery. If we say the darkness shall cover us, in the darkness as in the light, our obligations are yet with us. We cannot escape their power, nor fly from their presence. They are with us in this life, will be with us at its close; and in that scene of inconceivable solemnity, which lies yet farther onward—we shall still find ourselves surrounded by the consciousness of duty, to pain us, wherever it has been violated, and to console us so far as God may have given us grace to perform it.

REMARKS

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, ON THE BILL TO AMEND THE JUDICIARY SYSTEM. JAN. 4, 1826.

[This bill proposed that the Supreme Court of the United States should thereafter consist of a Chief Justice and nine Associate Justices, and provided for the appointment of three Additional Asscciate Justices of said Court.

That the seventh Judicial Circuit Court of the United States should thereafter consist of the Districts of Ohio, Indiana, and Illinois; the eighth Circuit, of the Districts of Ken tucky and Missouri; the ninth Circuit, of the Districts of Tennessee and Alabama; and the tenth Circuit, of the Districts of Louisiana and Mississippi.

It repealed so much of any act or acts of Congress, as vested in the District Courts of the United States in the Districts of Indiana, Illinois, Missouri, Mississippi, Alabama, and Louisiana, the powers and jurisdiction of Circuit Courts, and provided that there should be thereafter Circuit Courts for said Districts, to be composed of the Justice of the Supreme Court, assigned or allotted to the Circuit to which such Districts might respectively belong, and of the District Judge of such Districts.]

Mr. WEBSTER said that the bill, which was under consideration of the Committee, was so simple in its provisions, and so unembarrassed with detail, that little or nothing, in the way of explanation, merely, was probably expected from the Committee. But the general importance of the subject, and the material change which the proposed measure embraces, demanded some exposition of the reasons which had led the Committee on the Judiciary to submit it to the consideration of the House.

The occasion naturally presents two inquiries: first, whether any evils exist in the administration of justice in the Courts of the United States; and, secondly, whether, if there be such evils, the proposed bill is a proper and suitable remedy. On both these points, it is my duty to express the sentiments which the Committee on the Judiciary entertain. Perhaps, however, Mr. Chairman, before entering into a discussion of those two questions, I may be allowed to state something of the history of this Department of the Government, and to advert to the several laws which have been, from time to time, enacted, respecting its organization.

The Judicial power, which, by the Constitution, was to be exercised by the present Government, necessarily engaged the attention of the first Congress. The subject fell into the hands of very able men, and it may well excite astonishment that the system which they prepared and recommended, and which was adopted in the hurried session of the summer of 1789, has been found to fulfil, so far, so

well, and for so long a time, the great purposes which it was designed to accomplish. The general success of the general system, so far, may well inspire some degree of caution in the minds of those who are called on to alter or amend it.

By the original act, of September, 1789, there was to be a Supreme Court, according to the Constitution, which was to consist of six Judges, and to hold two sessions a year at the seat of Government. The United States, or such of them as had then adopted the Constitution, were to be divided into Circuits and Districts, and there was to be a District Court, in each District, holden by a District Judge. The Districts were divided into three Circuits, the Eastern, the Middle, and the Southern; and there was to be a Circuit Court in each District, to be composed of two of the Justices of the Supreme Court, and the District Judge for the District; this Circuit Court was to hold two sessions a year, in each District, and I need not inform the Committee, that the great mass of business, excepting only that of Admiralty and Maritime jurisdiction, belonged to the Circuit Court as a Court of original jurisdiction. It entertained appeals, or writs of error, also, from the decisions of the District Courts, in all cases.

By this arrangement, then, the Justices of the Supreme Court were required to hold two sessions of that Court, annually, at the Seat of Government, to hear appeals and writs of error; and it was required of them also, that two of them should attend in each District twice a year, to hold, with the District Judge, a Circuit Court.

It was found that these duties were so burdensome, that they could not be performed. In November, 1792, the Judges addressed the President on the subject, (who laid their communication before Congress,) setting forth their inability to perform, without exertions and sacrifices too great to be expected from any men, the services imposed on them by law. It was, doubtless, this communication which produced the law of March, 1793, by which it was provided that one Judge of the Supreme Court, with the District Judge, should constitute the Circuit Court. And, inasmuch as the Courts would now consist of two Judges, provision was made, perhaps sufficiently awkward and inconvenient, for the case of difference of opinion. It will be observed, Mr. Chairman, that by these laws, thus far, particular Justices are not assigned to particular Circuits. Any two Judges of the Supreme Court, under the first law, and any one, under that of 1793, with the District Judge, constituted a Circuit Court. A change, or alternation, of the Judges, was contemplated by the law. Therefore, it was provided, by the act of 1793, that, in case of division of opinion, as the Court consisted of but two Judges, the question should be continued to the next session, and, if a different Judge then appeared, and his opinion coincided with that of his predecessor, judgment should go accordingly.

And here, Mr. Chairman, I wish to observe, that, in my opinion, the original plan of holding the Circuit Courts by different Judges, from time to time, was ill-judged; it was founded on a false analogy: it seems to have been borrowed from the English Courts of Assize and *Nisi Prius;* but the difference in the powers and jurisdiction of

the Judges in the two cases, rendered what was proper for one, not a fit model for the other. The English Judges at *Nisi Prius*, so far as civil causes are concerned, have nothing to do but try questions of fact by the aid of a jury, on issues or pleadings already settled in the Court from which the record proceeds. They give no final judgments; nor do they make interlocutory orders respecting the proceeding and progress of the cause. They take a verdict of the jury on the issues already joined between the parties, and give no other directions in matters of law, than such as become necessary in the course of this trial by jury. Every case begun, therefore, is ordinarily finished. Nothing of that case remains for the Judges' successor. If it be tried, the record is taken back with the verdict to Westminster Hall; if it be not tried, the whole case remains for a subsequent occasion. It is, perhaps, surprising, that the very able men who framed the first judicial act, did not see the great difference between this manner of proceeding at the English Assizes, and the necessary course of proceeding in our Circuit Courts, with the powers and jurisdictions conferred on those Courts. These are Courts of final jurisdiction; they not only take verdicts, but give judgments. Here suits are brought, proceeded with, through all their stages, tried, and finally determined. And, as in the progress of suits, especially those of equity jurisdiction, it necessarily happens that there are different stages, and successive orders become necessary, from term to term, it happened, of course, that the Judge was often changed before the cause was decided: he who heard the end, had not heard the beginning. And, when to this is added, that these Judges were bred in different schools, and, as to matters of practice, especially, accustomed to different usages, it will be easy to perceive that no small difficulties were to be encountered in the ordinary despatch of business. So, in cases reserved for advisement and further consideration, the Judge reserving the question, was not the Judge to decide it. He who heard the argument, was not to make the decision. Without pursuing this part of the case farther, it is quite obvious that such a system could not answer the ends of justice.

The Courts, indeed, were called Circuit Courts; which seemed to imply an itinerant character; but, in truth, they resembled much more, in their power and jurisdiction, the English Courts sitting in bench, than the Assizes, to which they appear to have been likened.

The act of 1793, by requiring the attendance of only one, instead of two, of the Judges of the Supreme Court, on the Circuits, of course diminished, by one half, the Circuit labors of those Judges.

We then come to the law of February, 1801. By this act, the Judges of the Supreme Court were relieved from all Circuit duties. Provision was made that their number should be reduced, on the first vacancy, from six to five. They were still to hold two sessions annually, of the Supreme Court: and Circuit Judges were appointed to hold the Circuit Court in each District. The provisions of this law are generally known, and it is not necessary to recite them particularly. It is enough to say, that, in five of the six Circuits, the Circuit Court was to consist of three Judges, specially appoint-

ed to constitute such Court; and, in the sixth, of one Judge, specially appointed, and the District Judge of the District.

We all know, sir, that this law lasted but a twelvemonth. It was repealed *in toto* by the act of March 8, 1802; and a new organization of the Circuit Courts was provided for by the act of the 29th of April, of that year. It must be admitted, I think, sir, that this act made considerable improvements upon the system, as it existed before the act of February, 1801. It took away the itinerary character of the Circuit Courts, by assigning particular Justices to particular Courts. This, in my opinion, was a great improvement. It conformed the constitution of the Court to the nature of the powers which it exercised. The same Judges now heard the cause through all the stages of its progress, and the Court became, what its duties properly made it, a Court of Record, with permanent Judges, exercising a various jurisdiction, trying causes at its bar by Jury, in cases proper for the intervention of a jury, and rendering final judgments. This act, also, provided another mode of proceeding with cases in which the two Judges composing the Circuit Court should differ in opinion. It prescribed, that such difference should be stated, certified to the Supreme Court, and that that Court should decide the question, and certify its decision to the Circuit Court.

In this state of things, the Judicial System remained, without material change, until the year 1807, when a law was passed for the appointment of an additional Judge of the Supreme Court, and a Circuit allotted to him in the Western States.

It may be here observed, that, from the commencement, the system has not been uniform. From the first, there was an anomaly in it. By the original act of September, 1789, a District Court was established for Kentucky, (then part of Virginia,) and for Maine, (then part of Massachusetts,) and, in addition to the powers of District Courts, there was conferred on these, all the jurisdiction which elsewhere belongs to Circuit Courts, and, in other cases, as new States were added to the Union, District Courts were established, with the powers of Circuit Courts. The same thing has happened, too, when States have been divided into two Districts There are, at present, several States which have no Circuit Court except the District Court, and there are other States which are divided into more than one District, and in some of which Districts there is but a District Court with Circuit Court jurisdiction; so that it cannot be said, that the system has been at any time entirely uniform.

So much, Mr. Chairman, for the history of our legislation on the Judicial Department.

I am not aware, Mr. Chairman, that there is any public complaint of the operation of the present system, so far as it applies to the Atlantic States. So far as I know, justice has been administered efficiently, promptly, and satisfactorily, in all those Circuits. The Judges, perhaps, have a good deal of employment: but they have been able to go through their arduous duties in such manner as to leave no cause of complaint, as far as I am informed. For my own part, I am not sanguine enough to expect, as far as those Circuits

are concerned, that any improvement can be made. In my opinion, none is needed. But it is not so in the Western States. Here exists a great deficiency. The country has outgrown the system. This is no man's fault nor does it impute want of usual foresight to any one. It would have seemed chimerical in the framers of the law of 1789, if they had struck out a plan which should have been adequate to the exigencies of the country, as it actually exists in 1826. From a period as far back as the close of the late war, the people of the West have applied to Congress on the subject of the Courts. No session of Congress has passed without an attempt, in one or the other House, to produce some change: and although various projects have been presented, the inherent difficulties of the subject have prevented any efficient action of the Legislature. I will state, shortly, sir, and as nearly as I remember, what has been at different times proposed.

In the first place, it has been proposed to recur to the system of Circuit Courts, upon the principle, although not exactly after the model, of the act of February, 1801. A bill of this character passed the Senate in 1819, dividing the country into nine Circuits, and providing for the appointment of one Circuit Judge to each Circuit, who, with the District Judge of the District, should constitute the Circuit Court. It also provided, that the Supreme Court, as vacancies should occur, should be reduced to five members. This bill, I believe, was not acted upon in this House. Again it has been proposed, to constitute Circuit Courts by the union of the District Judges in the Circuit. It has been proposed, also, to extend the existing system somewhat in conformity to the object of the present bill, by adding to the number of the Judges in the Supreme Court. And a different arrangement still has been presented, which contemplates the appointment of Circuit Judges for some Districts, and the continued performance of Circuit duties by the Supreme Judges in others, with such legal provision as shall not attach the Judges of the Supreme Court, in the performance of their Circuit duties, unequally, to any part of the country, but allow them to be distributed equally and fairly, over the whole. This system, though somewhat complex, and perhaps liable to be misunderstood, is, I confess, what appears to me best of all suited to our condition. It would not make the Supreme Court too numerous; and it would still require from its members the performance of Circuit duties; it would allow a proper distribution of these members to every part of the country; and, finally, it would furnish an adequate provision for the despatch of business in the Circuit Courts. Upon this plan, a bill was presented to the House of Representatives at the first session of the last Congress, but it did not meet with general favor; and the fate of a similar proposition elsewhere, at a subsequent period, discourages any revival of it.

I now come, sir, to consider whether any, and what, evils exist, and then, whether this bill be a suitable remedy. And in the first place, it is said, perhaps with some justice, that the business of the Supreme Court itself, is not gone through with sufficient promptitude: that it is accumulating: that great delays are experienced, and greater delays feared. As to this, I would observe, that the annual

session of the Court cannot last above six or seven weeks, because it commences in February, and the Circuit duties of the Judges require them to leave this place the latter part of March. But I know no reason why the Judges should not assemble earlier. I believe it would not materially interfere with their Circuit duties, to commence the session here in the early part of January; and if that were the case, I have little doubt that, in two years, they would clear the docket. A bill to make this change, passed this House two years ago; I regret to say, it was not acted upon in the Senate.

As to returning to the original practice of having two sessions of the Supreme Court within the year, I incline to think it wholly inexpedient. The inconvenience arising from the distance of suitors and counsel from the seat of government, forms a decisive objection to that proposition.

The great evil, however, sir, at present experienced, that which calls most loudly and imperatively for a remedy, is, the state of business in the Circuit Courts in the Western States. The seventh Circuit consists of Kentucky, Ohio, and Tennessee. All the other Western States have District Courts, with the powers of Circuit Courts. I am fully of opinion, that some further provision is required of us, for the administration of justice in these States. The existing means are not equal to the end. The judicial organization is not competent to exercise the jurisdiction which the laws confer upon it. There is a want of men, and a want of time. In this respect, it appears to me, that our constitutional duty is very plain. The Constitution confers certain judicial powers on the Government of the United States: we undertake to provide for the exercise of these powers; but the provision is inadequate, and the powers are not exercised. By the Constitution, the judicial power of this Government extends, as well as to other things, to causes between citizens of different States. We open Courts professedly to exercise that jurisdiction: but they are not competent to it; it is not exercised with reasonable promptitude; the suitor is delayed, and the end of the constitutional provision, in some measure, defeated. Now, it appears to me very plain, that we should either refuse to confer this jurisdiction on the Courts, or that we should so constitute them, that it may be efficiently exercised.

I hold, sir, the certificate of the Clerk for the District and Circuit Court of the District of Kentucky, that there are now pending, in those Courts, 950 causes. As this is not a maritime district, most of these causes, doubtless, are in the Circuit Court; nor has this accumulation arisen from any want of diligence in the Judges themselves: for, the same paper states, that 2,000 causes have been disposed of within the last three years. The Memorial of the Bar of Nashville informs us that 160 cases are pending in the Circuit Court for the Western District of Tennessee; a number, perhaps not much less, is on the docket of the Court for the Eastern District of Tennessee; and, I am authorised to state, that 200, or 250, may be taken as the number of suits pending in the Circuit Court of Ohio. These three States, sir, constitute one Circuit: they extend over a wide region; the places for holding the Courts are at vast distances from one another; and it is not within the power of man, that the

Judge assigned to this Circuit should get through the duties of his station. With the state of business in the other western and south-western States, I am not so particularly acquainted. Gentlemen from those States will expose it to the Committee. I know enough, however, to be satisfied that the whole case calls for attention. It grows no better by delay, and, whatever difficulties embarrass it, we may as well meet them at once, and agree upon such remedy as shall, upon the whole, seem most expedient.

And this, sir, brings me to the most difficult part of our inquiry; that is to say, whether such a measure as this bill proposes, be the proper remedy. I beg to say, sir, that I feel this difficulty as deeply as it can be felt by any member of the Committee; and while I express my own opinions, such as they are, I shall be most happy to derive light from the greater experience, or the better intelligence, of any gentleman. To me it appears, that we are brought to the alternative of deciding between something like what this bill proposes, and the Circuit Court system, as provided in the bill of the Senate, in 1819. As a practical question, I think it has come to this point: Shall we extend the present system, by increasing the number of the Judges? or, shall we recur to the system of Circuit Courts? I invoke the attention of the Committee to this question; because, thinking the one or the other inevitable, I wish for the mature judgment of the House on both.

In favor of the Circuit Court system, it may be said, that it is uniform, and may be made to apply to all the States equally: so that if new States come into the Union, Circuit Courts may be provided for them without derangement to the general organization. This, doubtless, is a consideration entitled to much weight. It is said, also, that, by separating the Judges of the Supreme Court from the Circuits, we shall leave them ample time for the discharge of the high duties of their appellate jurisdiction. This, no doubt, is true: but then, whether it be desirable, upon the whole, to withdraw the Judges of the Supreme Court from the Circuits, and to confine their labors entirely to the sessions at Washington, is a question which has most deeply occupied my reflections, and in regard to which I am free to confess, some change has been wrought in my opinions. With entire respect for the better judgment of others, and doubting, therefore, when I find myself differing from those who are wiser and more experienced, I am still constrained to say, that my judgment is against withdrawing the Judges of the Supreme Court from the Circuits, if it can be avoided. The reasons which influence this sentiment are general, and perhaps may be thought too indefinite and uncertain to guide in measures of public importance; they nevertheless appear to me to have weight, and I will state them with frankness, in the hope that, if they are without reasonable foundation, I shall be shown it, when certainly I shall cheerfully relinquish them.

In the first place, it appears to me that such an intercourse as the Judges of the Supreme Court are enabled to have with the profession, and with the people, in their respective Circuits, is itself an object of no inconsiderable importance. It naturally inspires respect and confidence, and it communicates and reciprocates infor-

mation through all the branches of the Judicial Department. This leads to a harmony of opinion and of action. The Supreme Court is, itself, in some measure, insulated; it has not frequent occasions of contact with the community. The Bar that attends it is neither numerous, nor regular in its attendance. The gentlemen who appear before it, in the character of counsel, come for the occasion, and depart with the occasion. The profession is occupied mainly in the objects which engage it in its own domestic forums; it belongs to the States; and their tribunals furnish its constant and principal theatre. If the Judges of the Supreme Court, therefore, are wholly withdrawn from the Circuits, it appears to me there is danger of leaving them without the means of useful intercourse with other judicial characters, with the profession of which they are members, and with the public. But, without pursuing these general reflections, I would say, in the second place, that I think it useful that Judges should see in practice the operation and effect of their own decisions. This will prevent theory from running too far, or refining too much. We find, in legislation, that general provisions of law, however cautiously expressed, often require limitation and modification; something of the same sort takes place in judicature: however beautiful may be the theory of general principles, such is the infinite variety of human affairs, that those most practised in them, and conversant with them, see at every turn a necessity of imposing restraints and qualifications on such principles. The daily application of their own doctrines will necessarily inspire Courts with caution; and, by a knowledge of what takes place upon the Circuits, and occurs in constant practice, they will be able to decide finally, without the imputation of having overlooked, or not understood, any of the important elements and ingredients of a just decision.

But further, sir, I must take the liberty of saying, that, in regard to the judicial office, constancy of employment is, of itself, in my judgment, a good, and a great good. I appeal to the conviction of the whole profession, if, as a general observation, they do not find that those who decide most causes, decide them best. Exercise strengthens and sharpens the faculties, in this, more than in almost any other employment. I would have the judicial office filled by him who is wholly a judge, always a judge, and nothing but a judge. With proper seasons, of course, for recreation and repose, his serious thoughts should all be turned to his official duties—he should be *omnis in hoc*. I think, sir, there is hardly a greater mistake than has prevailed occasionally in some of the States, of creating many Judges, assigning them duties which occupy but a small part of their time, and then making this the ground for allowing them a small compensation. The judicial office is incompatible with any other pursuit in life: and all the faculties of every man who takes it, ought to be constantly exercised, and exercised to one end. Now, sir, it is natural, that, in reasoning on this subject, I should take my facts from what passes within my own means of observation: if I am mistaken in my premises, the conclusion, of course, ought to be rejected. But I suppose it will be safe to say, that a session of eight weeks in the year, will probably be sufficient for the decision

of causes in the Supreme Court: and, reasoning from what exists in one of the most considerable Circuits in the Atlantic States, I suppose that eight, ten, or at most, twelve weeks, may be the average of the time requisite to be spent by a Circuit Judge in his Circuit Court in those Circuits. If this be so, then, if the Courts be separated, we have Supreme Judges occupied two months out of twelve, and Circuit Judges occupied three months out of twelve. In my opinion, this is not a system either to make, or to keep good Judges. The Supreme Court exercises a great variety of jurisdictions; it reverses decisions at common law, in equity, and in admiralty; and with the theory and the practice of all these systems, it is indispensable that the Judges should be accurately and intimately acquainted. It is for the Committee to judge how far the withdrawing them from the Circuits, and confining them to the exercise of an appellate jurisdiction, may increase or diminish this information. But, again, sir, we have a great variety of local laws existing in this country, which are the standard of decision where they prevail. The laws of New England, Maryland, Louisiana, and Kentucky, are almost so many different codes. These laws are to be construed and administered, in many cases, in the Courts of the United States. Now, is there any doubt, that a Judge, coming on the bench of the Supreme Court, with a familiar acquaintance with these laws, derived from daily practice and decisions, must be more able, both to form his own judgment correctly, and to assist that of his brethren, than a stranger who only looks at the theory? This is a point too plain to be argued. Of the weight of the suggestion the Committee will judge. It appears to me, I confess, that a Court remotely situated, a stranger to these local laws in their application and practice, with whatever diligence, or with whatever ability, must be liable to fall into great mistakes.

May I ask your indulgence, Mr. Chairman, to suggest one other idea: With no disposition, whatever, to entertain doubts as to the manner in which the Executive duty of appointments shall at any time hereafter be performed, the Supreme Court is so important, that, in whatever relates to it, I am willing to make assurance doubly sure, and to adopt, therefore, whatever fairly comes in my way, likely to increase the probability that able and efficient men will be placed upon that bench. Now, I confess, that I know nothing which I think more conducive to that end, than the assigning to the members of that Court, important, responsible, individual duties. Whatsoever makes the individual prominent, conspicuous, and responsible, increases the probability that he will be some one possessing the proper requisites to be a Judge. It is one thing to give a vote upon a bench, (especially if it be a numerous bench,) for plaintiff or defendant, and quite another thing to act as the head of a Court, of various jurisdiction, civil and criminal—to conduct trials by Jury, and render judgments in law, equity, and admiralty. While these duties belong to the condition of a Judge on the bench, that place will not be a sinecure, nor likely to be conferred without proofs of proper qualifications. For these reasons I am inclined to wish that the Judges of the Supreme Court may not be separated from the Circuits, if any other suitable provision can be made.

As to the present bill, Mr. Chairman, it will doubtless be objected that it makes the Supreme Court too numerous. In regard to that, I am bound to say, that my own opinion was, that the present exigency of the country could have been answered by the addition of two members to the Court. I believe the three northwestern States might well enough go on for some time longer; and form a Circuit of themselves, perhaps, hereafter, as the population shall increase, and the state of their affairs require it. The addition of the third Judge is what I assent to, rather than what I recommend. It is what I would gladly avoid, if I could with propriety. But, on the subject of the number of Judges, I admit that, for some causes, it will be inconveniently large: for such, especially, as require investigation into matters of fact, such as those of Equity and Admiralty; and, perhaps, for all private causes, generally. But the great and leading character of the Supreme Court, its most important duties, and its highest functions, have not yet been alluded to. It is its peculiar relation to this Government, and the State Governments: It is the power which it rightfully holds and exercises, of revising the opinions of other tribunals on Constitutional questions, as the great practical expounder of the powers of the Government; which attaches to this tribunal the greatest attention, and makes it worthy of the most deliberate consideration. Duties at once so important and so delicate, impose no common responsibility, and require no common talent and weight of character. A very small Court seems unfit for these high functions. These duties, though essentially judicial, partake something of a political character. The Judges are called on to sit in judgment on the acts of independent States: they control the will of sovereigns: they are liable to be exposed, therefore, to the resentment of wounded sovereign pride; and from the very nature of our system, they are called on, also, sometimes, to decide whether Congress has not exceeded its constitutional limits. Sir, there exists not upon the earth, and there never did exist, a judicial tribunal clothed with powers so various, and so important. I doubt the safety of rendering it small in number My own opinion is, that, if we were to establish Circuit Courts, and to confine their Judges to their duties on the bench, their number should not at all be reduced: and if, by some moderate addition to it, other important objects may well be answered, I am prepared to vote for such addition. In a government like ours, entirely popular, care should be taken in every part of the system, not only to do right, but to satisfy the community that right is done. The opinions of mankind naturally attach more respect and confidence to the decisions of a Court somewhat numerous, than to those of one composed of a less number. And, for myself, I acknowledge my fear, that, if the number of the Court were reduced, and its members wholly withdrawn from the Circuits, it might become an object of unpleasant jealousy, and great distrust.

Mr. Chairman, I suppose I need not assure the Committee that, if I saw any thing in this bill which would lessen the respectability, or shake the independence of the Supreme Court, I am the last man to be in favor of it. I look upon the Judicial Department of this government, as its main support. I am persuaded that it could not

exist without it. I shall oppose whatever I think calculated to disturb the fabric of government; to unsettle what is settled; or to shake the faith of honest men in the stability of the laws, or the purity of their administration. If any gentleman shall show me that any of these consequences is like to follow the adoption of this measure, I shall hasten to withdraw from it my support. But I think we are bound to do something: and shall be most happy if the wisdom of the House shall suggest a course more free of difficulties than that which is now proposed to it.

FURTHER REMARKS ON THE SAME SUBJECT, IN REPLY TO THE ARGUMENTS USED AGAINST THE BILL, AND IN FAVOR OF ITS POSTPONEMENT. JAN. 25, 1826.

I HAD not intended, sir, to avail myself of the indulgence which is generally allowed, under circumstances like the present, of making a reply. But the House has been invited, with such earnestness, to postpone this measure to another year; it has been pressed, with so much apparent alarm, to give no further countenance or support now to the bill, that I reluctantly depart from my purpose, and ask leave to offer a few brief remarks upon the leading topics of the discussion.

This, sir, must be allowed, and is, on all hands allowed, to be a measure of great and general interest. It respects that important branch of Government, the Judiciary; and something of a Judicial tone of discussion is not unsuitable to the occasion. We cannot treat the question too calmly, or too dispassionately. For myself, I feel that I have no pride of opinion to gratify, no eagerness of debate to be indulged, no competition to be pursued. I hope I may say, without impropriety, that I am not insensible to the responsibility of my own situation as a member of the House, and a member of the Committee. I am aware of no prejudice which should draw my mind from the single and solicitous contemplation of what may be best; and I have listened attentively, through the whole course of this debate, not with the feelings of one who is meditating the means of replying to objections, or escaping from their force, but with an unaffected anxiety to give every argument its just weight, and with a perfect readiness to abandon this measure, at any moment, in favor of any other, which should appear to have solid grounds of preference. But I cannot say that my opinion is altered. The measure appears to my mind in the same light as when it was first presented to the House. I then saw some inconveniences attending it, and admitted them: I see them now; but while the effect of this discussion, in my own mind, has not been to do away entirely the sense of these inconveniences, it has not been, on the other hand, to remove the greater objections which exists to any other plan. I remain fully convinced, that this course, is, on the whole, that which is freest of difficulties. However plausible other systems may seem in their general outline, objections arise,

and thicken as we go into their details. It is not now at all certain that those who are opposed to this bill, are agreed, as to what other measure should be adopted. On the contrary, it is certain, that no plan unites them all; and they act together only on the ground of their common dissatisfaction with the proposed bill. That system which seems most favored, is the Circuit system, as provided for in the Senate's bill of 1819. But as to that there is not an entire agreement. One provision in that bill was, to reduce the number of the Judges of the Supreme Court to five. This was a part, too, of the original resolution, on motion of the gentleman from Virginia; but it was afterwards varied; probably to meet the approbation of the gentleman from Pennsylvania, and others who preferred to keep the Court at its present number. But again, other gentlemen, who are in opposition to this bill, have still recommended a reduction of that number. Now, sir, notwithstanding such reduction was one object, or was to be one effect, of the law of 1801, it was contemplated, also, in the Senate's bill of 1819, and has been again recommended by the gentleman from Virginia, and other gentlemen, yet I cannot persuade myself, that any ten members of the House, upon mature reflection, would now be in favor of such reduction. It could only be made to take place when vacancies should occur on the bench, by death or resignation. Of the seven Judges of which the Court consists, six are now assigned to Circuits in the Atlantic States—one only is attached to the Western Districts. Now, sir, if we were to provide for a reduction, it might happen that the first vacancy would be in the situation of the single Western Judge. In that event, no appointment could be made until two other vacancies should occur, which might be several years. I suppose that no man would think it just, or wise, or prudent, to make such legal provision, as that it might happen that there should be no Western Judge at all, on the Supreme Bench, for several years to come. This part of the plan, therefore, was wisely abandoned by the gentleman. The Court cannot be reduced; and the question is only between seven Supreme Judges, with ten Circuit Judges, and ten Supreme Judges, with no Circuit Judges.

I will take notice here of another suggestion, made by the gentleman from Pennsylvania, who is generally so sober-minded and considerate in his observations, that they deserve attention, from respect to the quarter whence they proceed. That gentleman recommends that the Judges of the Supreme Court should be relieved from Circuit duties, as individuals, but proposes, nevertheless, that the whole Court should become migratory, or ambulatory, and that its sessions should be holden, now in New York or Boston, now in Washington or Richmond, and now in Kentucky or Ohio. And it is singular enough that this arrangement is recommended in the same speech, in which the authority of a late President is cited, to prove, that considerations arising from the usually advanced age of some of the Judges, and their reasonable desire for repose, ought to lead us to relieve them from all Circuit duties whatever. Truly, sir, this is a strange plan of relief. Instead of holding Courts in his own State, and perhaps in his own town, and visiting a neighbouring State, every Judge is to join every other judge, and the whole bench to make, together, a sort of Judicial progress. They

are to visit the North, and the South, and to ascend and descend the Alleghany. Sir, it is impossible to talk seriously against such a proposition. To state it, is to refute it. Let me merely ask, whether, in this peregrination of the Court, it is proposed that they take all their records of pending suits, and the whole calendar of causes, with them? If so, then the Kentucky client, with his counsel, is to follow the Court to Boston; and the Boston client to pursue it back to Kentucky. Or is it, on the contrary, proposed, that there shall be grand Judicial divisions in the country, and that, while at the North, for example, none but northern appeals shall be heard? If this be intended, then I ask how often could the Court sit, in each of these divisions? Certainly, not oftener than once in two years; probably, not oftener than once in three. An appeal, therefore, might be brought before the Appellate Court, in two or three years from the time of rendering the first judgment; and supposing judgment to be pronounced, in the Appellate Court, at the second term, it would be decided in two or three years more. But it is not necessary to examine this suggestion further. Sir, everything conspires to prove, that, with respect to the great duties of the Supreme Court, they must be discharged at one annual session, and that session must be holden at the seat of Government. If such provision be made as that the business of the year, in that Court, may be despatched, within the year, reasonable promptitude in the administration of justice will be attained: and such provision, I believe, may be made.

Another objection advanced by the member from Pennsylvania, applies as well to the system as it now exists, as to what it will be if this bill shall pass. The honorable member thinks, that the Appellate Court and the Court from which the appeal comes, should, in all cases, be kept entirely distinct and separate. True principle requires, in his judgment, that the Circuit Judge should be excluded from any participation in the revision of his own judgments. I believe, sir, that in the early history of the Court, the practice was, that the Judge, whose opinion was under revision, did not partake in the deliberations of the Court. This practice, however, was afterwards altered, and the Court resolved that it could not discharge the Judge from the duty of assisting in the decision of the appeal. Whether the two Courts ought to be kept so absolutely distinct and separate as the member from Pennsylvania recommends, is not so clear a question as that competent Judges may not differ upon it. On the one hand, it may very well be said, that, if the judgment appealed from has been rendered by one of the Judges of the Appellate Court, courtesy, kindness, or sympathy, may inspire some disposition in the members of the same bench to affirm that judgment; and that the general habit of the Court may thus become unfriendly to a free and unbiassed revision. On the other hand, it may be contended, that, if there be no medium of communication between the Court of the first instance, and the Court of Appellate jurisdiction, there may be danger that the reasons of the first may not be always well understood, and its judgments consequently liable, sometimes, to be erroneously reversed. It certainly is not true, that the chance of justice, in an Appellate Court, is always precisely equal to the chance of reversing the judgment below; although it is necessary for the peace of society and the termination of litigation, to take it

for granted, as a general rule, that that is decided right which is decided by the ultimate tribunal. To guard against too great a tendency to reversals in Appellate Courts, it has often been thought expedient to furnish a full opportunity at least, of setting forth the grounds and reasons of the original judgment. Thus, in the British House of Lords, a judgment of the King's Bench is not ordinarily reversed until the Judges have been called in, and the reason of their several opinions stated by themselves. And thus, too, in the Court of Errors of New York, the Chancellor and the Judges are members of the Court; and, although they do not vote upon the revision of their own judgments or decrees, they are expected, nevertheless, to assign and explain their reasons. In the modern practice of the Courts of Common Law, causes are constantly and daily revised on motions for new trials founded on the supposed misdirection of the Judge in matter of law. In these cases, the Judge himself is a component member of the Court, and constantly takes part in its proceedings. It certainly may happen in such cases, that some bias of preconceived opinion may influence the individual Judge, or that some undue portion of respect for the judgment already pronounced, may unconsciously mingle itself with the judgments of others. But the universality of the practice sufficiently shows, that no great practical evil is experienced from this cause. It has been said in England, that the practice of revising the opinions of Judges, by motions for new trial, instead of filing bills of exception, and suing out writs of error, has greatly diminished the practical extent of the appellate jurisdiction of the House of Lords. This shows, that suitors are not advised that they have no hope to prevail against the first opinions of individual Judges, or the sympathy of their brethren. Indeed, sir, Judges of the highest rank of intellect have always been distinguished for the candor with which they reconsider their own judgments. A man who should commend himself for never having altered his opinion, might be praised for firmness of purpose; but men would think of him, either that he was a good deal above all other mortals, or somewhat below the most enlightened of them. He who is not wise enough to be always right, should be wise enough to change his opinion when he finds it wrong. The consistency of a truly great man is proved by his uniform attachment to truth and principle, and his devotion to the better reason; not by obstinate attachment to first formed notions. Whoever has not candor enough, for good cause, to change his own opinions, is not safe authority to change the opinions of other men. But at least, sir, the member from Pennsylvania will admit, that, if an evil in this respect exist under the present law, this bill will afford some mitigation of that evil; by augmenting the number of the Judges, it diminishes the influence of the individual whose judgment may be under revision: and so far, I hope, the honorable member may himself think the measure productive of good.

But, sir, before we postpone to another year the consideration of this bill, I beg, again, to remind the House that the measure is not new. It is not new in its general character; it is not entirely new in its particular provisions. The necessity of some reform in the Judicial establishment of the country, has been presented to every Congress, and every session of Congress, since the peace of

1815. What has been recommended, at different times, has been already frequently stated. It is enough, now, to say, that the very measure of extending the system by increasing the number of the Judges of the Supreme Court, was presented to the House, among other measures in 1823, by the Judiciary Committee; and that so late as the last session, it received a distinct expression of approbation in the other branch of the Legislature. Gentlemen have referred to the bill introduced into this House two years ago. That bill had my approbation; I so declared at the commencement of this debate. It proposed to effect the object of retaining the Judges upon their Circuits, without increasing their number. But it was complex. It was thought to be unequal, and it was unsatisfactory. There appeared no disposition in the House to adopt it; and when the same measure in substance was afterwards proposed in the other branch of the Legislature, it received the approbation of no more than a half dozen voices. This led me to make a remark, at the opening of the debate, which I have already repeated, that, in my opinion, we are brought to the narrow ground of deciding between the system of Circuit Courts and the provisions of this bill. Shall we keep the Judges upon the Circuits and augment their number, or shall we relieve them from Circuit duties, and appoint special Circuit Judges in their places? This, as it seems to me, is the only practical question remaining for our decision.

I do not intend, sir, to go again into the general question, of continuing the Judges of the Supreme Court in the discharge of Circuit duties. My opinion has been already expressed, and I have heard nothing to alter it. The honorable gentlemen from Virginia does me more than justice in explaining any expression of his own which might refer this opinion to a recent origin, or to any new circumstances. I confess, sir, that four-and-twenty years ago, when this matter was discussed in Congress, my opinion, as far as I can be supposed to have had any opinion then on such subjects, inclined to the argument that recommended the separation of the Judges from the Circuits. But, if I may be pardoned for referring to anything so little worthy the regard of the House, as my own experience, I will say that that experience early led me to doubt the correctness of the first impression, and that I became satisfied that it was desirable, in itself, that the Judges of the Supreme Court should remain in the active discharge of the duties of the Circuits. I have acted in conformity to this sentiment, so often as this subject has been before Congress, in the short periods that I have been a member. I still feel the same conviction; and though I shall certainly yield the point, rather than that no provision for the existing exigency should be made; yet I should feel no inconsiderable pain in submitting to such necessity. I do not doubt, indeed, sir, that, if the Judges were separated from Circuit duties, we should go on very well for some years to come. But, looking to it as a permanent system, I view it with distrust and anxiety. My reasons are already before the House. I am not about to repeat them. I beg to take this occasion, however, to correct one or two misapprehensions of my meaning into which gentlemen have fallen. I did not say, sir, that I wished the Judges of the Supreme Courts to go upon the Circuits, to the end that they might see, in the country, the impression

which their opinions made upon the public sentiment. Nothing like it. What I did say, was, that it was useful that the Judge of the Supreme Court should be able to perceive the application and bearings of the opinions of that Court, upon the variety of causes coming before him at the Circuit. And is not this useful? Is it not probable that the Judge will lay down a general rule with the greatest wisdom and precision, who comprehends, in his view, the greatest number of instances to which that rule is to be applied? As far as I can now recall the train of my own ideas, the expression was suggested by a reflection upon the laws of the Western States, respecting title to land. We hear often in this House of "Judicial Legislation." If any such thing exist in this country, an instance of it, doubtless, is to be found in the Land Laws of some of the Western States. In Kentucky, for example, titles to the soil appear to depend, to a very great extent, upon a series of Judicial decisions, growing out of an act of the Legislature of Virginia, passed in 1779, for the sale and disposition of her public domain. The Legislative provision was very short and general; and as rights were immediately acquired under it, the want of Legislative detail could only be supplied by Judicial construction and determination. Hence, a system has grown up, which is complex, artificial, and argumentative. I do not impute blame to the Courts; they had no option but to decide cases as they arose, upon the best reasons. And, although I am a very incompetent judge in the case, yet, as far as I am informed, it appears to me that the Courts, both of the State, and of the United States, have applied just principles to the state of things which they found existing. But, sir, as a rule laid down at Washington, in one of these cases, may be expected to affect 500 others, is it not obvious that a Judge, bred to this peculiar system of law, and having also many of these cases in judgment before him, in his own Circuit, is better enabled to state, to limit, and to modify the general rule, than another Judge, though of equal talents, but who should be a stranger to the decisions of the State tribunals, a stranger to the opinions and practice of the profession, and a stranger to all cases except the single one before him for judgment?

The honorable member from Pennsylvania asks, sir, whether a statute of Vermont cannot be as well understood at Washington, as at Windsor or Rutland. Why, sir, put in that shape, the question has very little meaning. But, if the gentleman intends to ask, whether a Judge, who has been, for years, in the constant discharge of the duties incumbent upon him as the head of the Circuit Court in Vermont, and who, therefore, has had the statutes of that State frequently before him, has learned their interpretation by the State judications, and their connexion with other laws, local or general? if the question be, whether such a Judge be not, probably, more competent to understand that statute than another, who, with no knowledge of its local interpretation, or local application, shall look at its letter, for the first time, in the Hall of the Supreme Court? If this be the question, sir, which the honorable gentleman means to propound, I cheerfully refer him to the judgment of this House, and to his own good understanding for an answer. Sir, we have heard a tone of observation upon this subject which quite surprises

me. It seems to imply that one intelligent man is as fit to be a Judge of the Supreme Court as another. The perception of the true rule of law, and its true application, whether of local or general law, is supposed to be entirely easy, because there are many banks of statutes, and many books of decisions. There can be no doubt, it seems, that a Supreme Court, however constituted, would readily understand, in the instance mentioned, the law of Vermont, because the Statutes of Vermont are accessible. Nor need Louisiana fear, that her peculiar code will not be thoroughly and practically known, inasmuch as a printed copy will be found in the public libraries.

Sir, I allude to such arguments, certainly not for the purpose of undertaking a refutation of them, but only to express my regret that they should have found place in this discussion.—I have not contended, sir, for anything like Judicial representation. I care not in what terms of reproach such an idea be spoken of. It is none of mine. What I said was, and I still say it, that, with so many States, having various and different systems, with such a variety of local laws, and usages, and practices, it is highly important that the Supreme Court should be so constituted as to allow a fair prospect, in every case, that these laws and usages should be known; and that I know nothing, so naturally conducive to this end, as the knowledge and experience obtained by the Judges on the Circuits. Let me ask, sir, the members from New England, if they have ever found any man this side of the North River, who thoroughly understood our practice of special attachment, our process of garnishment, or trustee process, or our mode of extending execution upon land? And let me ask, at the same time, whether there be an individual of the profession, between this place and Maine, who is, at this moment, competent to the decisions of questions arising under the peculiar system of land titles of Kentucky or Tennessee? If there be such a gentleman, I confess I have not the honor of his acquaintance.

On the general question of the utility of constant occupation in perfecting the character of a Judge, I do not mean now to enlarge. I am aware that men will differ on that subject, according to their different means, or different habits of observation. To me it seems as clear as any moral proposition whatever. And I would ask the honorable member from Rhode Island, since he has referred to the Judge of the first Circuit, and has spoken of him in terms of respect, not undeserved, whether he supposes that that member of the Court, if, fifteen years ago, on receiving his commission, he had removed to this City, had remained here always since, with no other connexion with his profession than an annual session of six weeks in the Supreme Court, would have been the Judge he now is? Sir, if this question were proposed to that distinguished person himself, and if he could overcome the reluctance which he would naturally feel to speak at all of his own Judicial qualities, I am extremely mistaken if he would not refer to his connexion with the Circuit Court, and the frequency and variety of his labors there, as efficient causes in the production of that degree of ability, whatever it may be supposed to be, with which he now discharges the duties of his station.

There is not, sir, an entire revolution wrought in the mind of a professional man, by appointing him a Judge. He is still a lawyer; and if he have but little to do as a Judge, he is, in effect, a lawyer

out of practice. And, how is it, sir, with lawyers who are not Judges, and are yet out of practice? Let the opinion, and the common practice of mankind decide this. If you require professional assistance, in whatever relates to your reputation, your property, or your family, do you go to him who is retired from the bar, and who has this uninterrupted leisure to pursue his readings and reflections; or do you address yourself to him, on the contrary, who is in the midst of affairs, busy every day, and every hour in the day, with professional pursuits? But I will not follow this topic farther, nor dwell on this part of the case.

I have already said, that, in my opinion, the present number of the Court is more convenient than a larger number, for the hearing of a certain class of causes. This opinion I do not retract; for I believe it to be true. But the question is, whether this inconvenience be not more than balanced by other advantages? I think it is

It has been again and again urged, that this bill makes no provision for clearing off the term business of the Supreme Court; and strange mistakes, as it appears to me, are committed, as to the amount of arrears, in that Court. I believe that the bill intended to remedy that evil, will remedy it. I believe there is time enough for the Court to go through its list of causes here, without interfering with the sessions of the Circuit Courts; and, notwithstanding the mathematical calculations by which it has been proved that the proposed addition to the length of the term, would enable the Court to decide precisely nine additional causes and no more, yet I have authority to say, that those who have the best means of knowing, were of opinion, two years ago, that the proposed alteration of the term, would enable the Court, in two years, to go through all the causes before it, ready for hearing.

It has been said, sir, that this measure will injure the character of the Supreme Court; because, as we increase numbers, we lessen responsibility in the same proportion. Doubtless, as a general proposition, there is great truth in this remark. A Court, so numerous as to become a popular body, would be unfit for the exercise of Judicial functions. This is certain. But then this general truth, although admitted, does not enable us to fix, with precision, the point at which this evil either begins to be felt at all, or to become considerable, still less where it is serious or intolerable. If seven be quite few enough, it may not be easy to show, that ten must necessarily be a great deal too many. But there is another view of the case, connected with what I have said heretofore in this discussion, and which furnishes, in my mind, a complete answer to this part of the argument; and that is, that a Judge who has various important individual duties to perform, in the Circuit Court, and who sits in the Appellate Court with nine others, acts, in the whole, in a more conspicuous character, and under the pressure of more immediate and weighty responsibility, than if he performed no individual Circuit duty, and sat on the appellate bench with six others only.

But again, it has been argued, that to increase the number of the Supreme Court, is dangerous; because, with such a precedent, Congress may hereafter effect any purpose of its own, in regard to Judicial decisions, by changing, essentially, the whole constitution of the Court, and overthrowing its settled decisions, through the

means of augmenting the number of Judges. Whenever Congress, it is said, may dislike the constitutional opinions and decisions of the Court, it may mould it to its own views, upon the authority of the present example. But these abuses of power are not to be anticipated or supposed; and, therefore, no argument results from them.

If we were to be allowed to imagine that the Legislature would act in entire disregard of its duty, there are ways enough, certainly, beside that supposed, in which it might destroy the Judiciary, as well as any other branch of the Government. The Judiciary power is conferred, and the Supreme Court established, by the Constitution; but then Legislative acts are necessary to confer jurisdiction on inferior Courts, and to regulate proceedings in all Courts. If Congress should neglect the duty of passing such laws, the Judicial power could not be efficiently exercised. If, for example, Congress were to repeal the 25th section of the Judicial act of 1789, and make no substitute, there would be no mode by which the decisions of State tribunals, on questions arising under the Constitution and laws of the United States, could be revised in the Supreme Court. Or, if they were to repeal the 11th section of that act, the power of trying causes between citizens of different States, in the tribunals of this Government, could not be exercised. All other branches of the Government depend, in like manner, for their continuance in life and being, and for the proper exercise of their powers, on the presumption that the Legislature will discharge its constitutional duties. If it were possible to adopt the opposite supposition, doubtless there are modes enough to which we may look, to see the subversion, both of the Courts, and the whole Constitution.

Mr. Speaker, I will not detain you by further reply to the various objections which have been made to this bill. What has occurred to me as most important, I have noticed either now or heretofore; and I refer the whole to the dispassionate judgment of the House. Allow me, however, sir, before I sit down, to disavow, on my own behalf, and on behalf of the Committee, all connexion between this measure and any opinions or decisions, given or expected, in any causes, or classes of causes, by the Supreme Court. Of the merits of the case, of which early mention was made in the debate, I know nothing. I presume it was rightly decided, because it was decided by sworn Judges, composing a tribunal in which the Constitution and the laws have lodged the power of ultimate judgment. It would be unworthy, indeed, of the magnitude of this occasion, to bend our course a hair's breadth on the one side or the other, either to favor or to oppose what we might like, or dislike, in regard to particular questions. Surely we are not fit for this great work, if motives of that sort can possibly come near us. I have forborne, throughout this discussion, from all expression of opinion on the manner in which the members of the Supreme Court have heretofore discharged, and still discharge, the responsible duties of their station. I should feel restraint and embarrassment, were I to make the attempt to express my sentiments on that point. Professional habits and pursuits connect me with the Court, and I feel that it is not proper that I should speak here, of the personal qualities of its members, either generally or individually. They shall not suffer, at least, from any ill-timed or clumsy eulogy of mine. I could not, if I

would, make them better known than they are, to their country; nor could I either strengthen or shake the foundation of character and talent upon which they stand. But of the Judicial branch of the Government, and of the institution of the Supreme Court, as the head of that branch, I beg to say that no man can regard it with more respect and attachment than myself. It may have friends more able—it has none more sincere. No conviction is deeper in my mind, than that the maintenance of the Judicial power is essential and indispensable to the very being of this Government. The Constitution, without it, would be no Constitution—the Government, no Government. I am deeply sensible, too, and, as I think, every man must be whose eyes have been open to what has passed around him for the last twenty years, that the Judicial power is the protecting power of the whole Government. Its position is upon the outer wall. From the very nature of things, and the frame of the Constitution, it forms the point at which our different systems of Government meet in collision, when collision unhappily exists. By the absolute necessity of the case, the members of the Supreme Court become Judges of the extent of constitutional powers. They are, if I may so call them, the great arbitrators between contending sovereignties. Every man is able to see, how delicate and how critical must be the exercise of such powers, in free and popular Governments. Suspicion and jealousy are easily excited, under such circumstances, against a body, necessarily few in number, and possessing, by the Constitution, a permanent tenure of office. While public men, in more popular parts of the Government, may escape without rebuke, notwithstanding they may sometimes act upon opinions which are not acceptable, that impunity is not to be expected in behalf of Judicial tribunals. It cannot but have attracted observation, that, in the history of our Government, the Courts have not been able to avoid severe, and sometimes angry complaint, for giving their sanction to those public measures, which the Representatives of the people had adopted, without exciting particular disquietude. Members of this and the other House of Congress, acting voluntarily, and in the exercise of their general discretion, have enacted laws, without incurring an uncommon degree of dislike or resentment; and yet, when those very laws have been brought before the Court, and the question of their validity distinctly raised, and necessary to be determined, the Judges, affirming the constitutional validity of such acts, although the occasion was forced upon them, and they were absolutely bound to express the one opinion or the other, have, nevertheless, not escaped a severity of reproach, bordering upon the very verge of denunciation. This experience, while it teaches us the dangers which environ this Department, instructs us most persuasively, in its importance. For its own security, and the security of the other branches of the Government, it requires such an extraordinary union of discretion and firmness, of ability and moderation, that nothing in the country is too distinguished for sober sense, too gifted with powerful talent, to fill the situations belonging to it

MISCELLANIES

[From the N. A. Review of 1820.]

EXAMINATION OF SOME REMARKS IN THE QUARTERLY REVIEW ON THE LAWS OF CREDITOR AND DEBTOR IN THE UNITED STATES.

The Quarterly Review for May 1819 contained two articles concerning the United States; one a review of Fearon's* book of travels, and the other a review of Mr. Bristed's book upon the resources of America. The Quarterly Review is, as everybody knows, extensively circulated, and much read in this country; and these articles excited, at the time of their appearance, no small degree of attention. It would be difficult, we imagine, in the same number of pages, to crowd more misrepresentation, or betray more ignorance, than appears in these articles, especially that which we have first mentioned. To the common vaporings of the English presses we pay little attention. These oracles are no more to be regarded, in their vituperations of the government and people of this country, than similar oracles among ourselves, in *their* abuse of the government and people of England. The leaders of such assemblages as the Manchester mob, and the orators in the palace-yard, find it convenient to inflame the passions of their auditors by declaiming, in terms of high panegyric, of the condition of America; wisely contriving, by a sort of contrast, to breed discontent, and to sharpen the feeling of hatred towards their own government. Other speakers and other writers, finding or thinking it necessary to refute these representations, naturally enough run into opposite extremes, and set off their own condemnation and abuse of America against the extravagant encomiums of their adversaries. All this is in the course of things. It is no more than must always be expected, in a country with such a government, as that of England; and it is of no consequence to us, what is the issue of this little and low strife of temporary politics. We suffer about equally by the commendation of one party and the abuse of the other; and we ought to be regardless of both.

But different, far different, is the case, when a work of established reputation in the literary world professes to discuss our character and condition. When gentlemen and scholars undertake to write about us, we have more interest in what they say, and are

* The last that we have heard of this *author* is, that some time last winter a criminal information was moved for against him, in the King's Bench, for a conspiracy to produce a riot, at the election of the Lord Mayor.

less disposed to acquiesce in misrepresentation and injustice. The writers of the articles in question seem to have considered themselves as speaking *about* America, but not *to* America. They do not take the United States into the account of those who are to read their works, and judge of them. They do not look at the reading and thinking men on this side the Atlantic, as forming any part of that great tribunal of the PUBLIC, to which they acknowledge a responsibility. In this respect, in our humble judgment, they commit an oversight. English scholars, English editors, and English politicians have heretofore felt an unconquerable reluctance to admit the people of this country to a participation of those honors which belong to the civilized world, and the great family of Christian communities. They have been unwilling to see that North America has ceased to be a colony; and still desire to regard her, so far as respects acquirements, talents, and character, like Jamaica, Malta, or the Cape of Good Hope. This attempt, we may be allowed to say, will not succeed. America is entitled to her place among the nations, and nothing can keep her from it. It is in nature, as it appears to be in the purpose of Providence, that a people shall, within a short period of time, exist on this side the ocean, speaking the English language, springing principally from English origin, adopting English laws, and possessing the blessings of many of the most valuable of English institutions, so numerous, that the amount of British population, added or subtracted, would hardly make a sensible difference. Already the United States contain as many people as England, and among them there is, if not as full, yet as respectable a proportion belonging to the reading class. Whatever appears in England, and attracts attention there, in the departments of science, literature, poetry, or politics, appears here also, thirty days afterwards, with uniform regularity. We receive these reviews, wet from the press, and read and reprint and circulate them. We venture to say, that in no part of the Island of Great Britain, London excepted, is reading so general among the population, as in New England. Having thus, as we believe we have, in the United States, a larger reading community, than either Scotland or Ireland, how is it, that America is not to compose a part, and an important part, of that PUBLIC, before which a scientific and literary journal, composed and published in the English language, is to stand in judgment? We would modestly, but firmly, insist on this reasonable participation in the authority and dignity of public opinion. We hold the right, and mean both to exercise and to defend it, of having and of expressing opinions on subjects of science and literature, and respecting those who discuss these subjects.

It is a natural prejudice, that an old country should be unwilling to admit a young one upon any terms of equality. England herself is not thought old enough, nor respectable enough, to assume the port and bearing of an equal in the celestial empire of China; and there are elsewhere, as well as at Pekin, a dislike and scorn for the *novi homines*. English politicians and English scholars entertain towards us, when we press for admittance into their society and fellowship, something like that feeling, at once scornful and

jealous, with which the Earl of Wharton addressed the twelve new peers in the reign of Queen Anne. Yet this prejudice and this reluctance must give way; this scorn must be subdued, and this jealousy, if it be not, as it ought to be, eradicated, must become silent.

We, of the United States, have numbers and power and wealth, and a growing commerce, and a most extensive country, and, as we may think without vanity, some portion of that intelligence and spirit, which belongs to our more cultivated neighbours. Once for all, then, if we can express ourselves in such a manner as not to incur the imputation of arrogance, we wish to say, that we consider ourselves as forming a part, and a respectable part, of the great public of civilized and Christian nations; having an interest in such subjects discussed before that public, as are not in themselves local or peculiar; with a good right of contribution, as far as our ability admits, to those discussions ourselves; and above all a right to fair dealing and gentlemanly treatment from all who profess to write for the good of this public, and to be answerable to its judgment.

We put forth this claim in behalf of our country; and in behalf of the informed and reading class of its citizens. It is for the English writers to say, not whether it shall be admitted; that question we do not refer to their arbitrament: but whether, on their part, it shall be admitted freely, and with courtesy; or with hesitation, reluctance, ill nature, and ill manners.

We have space at present to take notice of one only of the topics, discussed in these articles. It relates to the American law of *creditor and debtor;* about which the reviewer has published extracts from Mr. Bristed's book, with comments. Mr. Bristed is an Englishman, by birth and education. He has lived, as it appears, for sometime in the city of New York, and has published a book upon the resources of this country. Some observations were made on that work in a former number of this journal. Referring to these observations, we have now only to say of Mr. Bristed's general character, as an authority, that he is beyond ordinary measure destitute of all accuracy and precision. There are, of course, many important facts collected in this book, and a mass of extracts from public documents, in some degree useful, perhaps, to those who do not possess the same matter in a better form; but his own opinions, and inferences, and observations upon manners, are not to be received but with great allowance. Mr. Bristed never speaks with any qualification. He has little general, and no intimate knowledge of the state of things in this country, and he speaks only from what lies within his own immediate and confined observation. With him all peculiarities are general truths, and all exceptions become rules. We have hardly patience with a man, who could write such a paragraph, as the first quoted from his book, in the article in the Quarterly Review, which we beg leave to transcribe again, and to proceed to make some remarks upon it.

"The laws of this country generally favor the *debtor* at the expense of the creditor, and so far encourage dishonesty. The number of insolvents in every state is prodigious, and continually increasing. They very seldom pay any part of their debts, but get discharged by the state insolvent acts with great facility, secrete what property they please for their own use, without the creditor's being able to

touch a single stiver. There is no bankrupt law in the United States, and no appeal, in these matters, to the Federal courts; whence in every state the insolvent acts operate as a general jail delivery of all debtors, and a permanent scheme, by which creditors are defrauded of their property. The British merchants and manufacturers, who have trusted our [*our ?*] people, doubtless understand this."

He adds, "that in a single city, New York, more than six thousand of its inhabitants were declared insolvent in one year."

Now in the first place, almost every matter of *fact*, asserted in this paragraph, is stated incorrectly and untruly. It is *not true*, that in every state the insolvent laws operate as a general jail delivery of all debtors; there being, in a majority of the states, no insolvent law at all.

It is *not true*, that there is no appeal in these matters, to the Federal courts: on the contrary, there is an appeal, in all cases, from decisions in the state courts, on the insolvent laws of the state, to the Supreme Court of the United States; an appeal, which exists not only theoretically, but practically, and has been resorted to often, and with effect.

It is *not true*, that the number of insolvents, meaning such as have been discharged under statute provisions, is prodigious in every state, and increasing. In most of the states, as we have observed, there are no such laws, and of course no 'prodigious numbers,' who have been, or who can be discharged under such laws. Having now shown how destitute of all correctness and all *truth* is the foregoing paragraph from Mr. Bristed's book, we proceed to describe the real state of the case.

At the formation of the present government in 1787, it was provided by the national constitution, that Congress should have power to establish uniform rules on the subject of Bankruptcy throughout the United States. This power was not exercised until 1798, when a uniform system of Bankruptcy was established by act of Congress. It met with great opposition, arising in a great variety of motives, and was repealed four or five years afterwards. It is, no doubt, to be lamented that a fair experiment was not given to this law. It is a subject on which it seems necessary that there should be some legislative provision; and notwithstanding the frauds which will be, and are committed under bankrupt laws, even well administered, and which have led such men as Lord Eldon, and Sir Samuel Romily to express doubts of their general utility, yet we know not any other mode of providing for the cases continually arising in commercial societies, and which call loudly for some provision. After the repeal of the law, however, individual states, acting upon the supposition that as Congress had not exercised the power, or had discontinued its exercise, of establishing a general law, for the whole country, they had a right to provide insolvent laws as a part of their own local legislation, enacted such laws, and gave them operation. Among others, the state of New York passed an insolvent law, in the year 1811, and, as was to be expected in the first year of its operation, many discharges were obtained under it. It was found that this law not only gave too great facilities in obtaining discharges, but that it led also to fraudulent applications from debtors coming from other states. The law was

repealed, we believe, within a year after its enactment; and it was, we suppose, during the period of this very short and extraordinary act, that Mr. Bristed finds his six thousand discharged in one year. Here then is a single act, from which a general law, and a general practice, is unhesitatingly inferred. 'The British merchants and manufacturers who have trusted our people doubtless understand this.' Does Mr. Bristed mean that the credit of American merchants is not good, in England? It would be new to us, indeed, to hear such a remark. Surely never was, not only all due credit, but all undue credit more easily obtained, than by the American merchants, for British manufactures.

The flippant and off-hand remark, that the laws of this country generally favor the debtor, at the expense of the creditor, is grossly incorrect, and can hardly be pardoned. There may be, among the state legislatures, an occasional relaxation, but to say that the general scope of the laws of this country is to favor the debtor at the expense of the creditor, is absolutely untrue, and calumnious. We still hold, in almost, if not in every state, to the imprisonment of the person for debt; we still hold every man, to be in law capable of paying to the uttermost farthing; and therefore we apply the old principle, *solvat per corpus, qui non possit crumena.* We discourage marriage settlements, and family settlements, to an extent, in the opinion of some, far too great; our lawgivers and tribunals all look with jealousy on trusts and entailments, and all the various modes of tying up estates, and rendering them inalienable; and all this simply from respect to the rights of creditors.

In most of the states also, the fee simple of the debtor's estate may be taken, to satisfy the creditor, and lastly, we hold, that whatever laws the individual states may pass respecting insolvents, such laws, if they in any manner impair the validity of contracts, are absolutely null and void. We have from the first introduced and maintained this great and salutary, and protecting principle in the fundamental articles of the national government; and yet Mr. Bristed can say, and the reviewers in England can believe, that in this country the laws are generally made to favor debtors at the expense of the creditors! Every well informed man knows the difficulty of legislating on the subject of insolvents; and none better than the eminent living judicial characters in England. We now speak of the *insolvent laws*, as distinguished from the bankrupt laws; since the insolvent laws which individual states have sometimes enacted in this country, resemble the *cessio bonorum* of the civil law, and the insolvent laws of England, much more than the bankrupt system of that country.

We wish, before gentlemen in England give credit to such loose calumnies as this of Mr. Bristed's upon the laws for the relief of insolvent debtors in the United States, they would attend to their own case, and to the difficulties which they themselves have experienced on this subject. This would, we think, give some moderation to their fault-finding, and some measure to their language of rebuke. We wish they would consult Lord Eldon, Lord Redesdale, Lord Aukland, Mr. Sergeant Runnington, the late, and Mr. Reynolds, the present judge of the insolvent debtor's court, upon the unavoidable obstacles, and difficulties which lie in the way of uniting

on this subject the just claims of creditors, with due compassion for honest but unfortunate debtors. When they have done this, we shall hear with somewhat more patience, what they may see to find fault with, in systems adopted by their neighbours.

It is well known that it has been the practice of Parliament to grant occasional relief to such insolvent debtors, as do not come within the provision of the bankrupt laws. And it being thought expedient to make a permanent provision on the subject, Parliament passed the act 53 *Geo.* III. *chap.* 102. This act, we believe, was drawn by Lord Redesdale, a man of the highest legal eminence, and of great experience. It has sixty sections, and appears to have been prepared with the utmost care and solicitude, in order that it might prevent, on the one hand, the harsh and unfeeling confinement of honest debtors, and on the other, the practice of fraud by the dishonest. This act was limited to November 1818, and to the end of the next session of Parliament. The powers and duties of the act were to be exercised and discharged by a judge, or commissioner, who should be some "fit person, being a barrister or lawyer of six years' standing at the court," and Mr. Sergeant Runnington was appointed to this office. We have already said, that the act contained all the provision which could be thought of, to prevent fraud on the one hand, and cruelty on the other; an application to be discharged was to be accompanied with an offer to assign all his property, excepting wearing apparel, bedding, and tools of his trade, never exceeding in all twenty pounds; and there must be annexed to the petition a schedule of property and effects, and another of debts due by the prisoner, and the prisoners' oath to the truth of these schedules; and every creditor to be served with a copy of the petition and schedule, and notice inserted in the Gazette, and other newspapers, and creditors to have a right to appear and to put any questions to the prisoner, touching his conduct under oath; and assignees to be appointed to receive his assets, books, &c. of all sorts; and then the court, after all, may annul his discharge if it shall appear to have been obtained by fraud, or revoke it, if it afterwards appear that he has ability to pay his debts. The assignees are required to get in effects and debts, and make distribution at the end of three months, &c. with proper penalties for perjury; with a train of exceptions, such as attorneys embezzling money, persons getting money on false pretences, &c. who are not to be allowed the benefit of the law.

Here then is a law for the relief of insolvent debtors, fully considered, and deliberately passed, guarded by all practicable securities, and limitations, and placed under the administration of a competent and learned court; and what is found to be the result? The law was to expire in July last, at the end of the last session of parliament, unless continued by another act. To prevent this continuing act, very numerous and very respectable petitions were laid on the table of the Lords and Commons. Innumerable and intolerable frauds were alleged to have been perpetrated in the cases arising under the act. A committee of the House of Commons reported, if we mistake not, "that during the whole duration of the law, and out of the prodigious number of cases in which debtors had surrendered

their property, and been discharged, there had not been received above a penny in the pound upon the average of the debts discharged." This we quote from memory, but our statement is sufficiently exact for our purpose.

We have thus alluded to the experience of England on the subject of insolvent debtors, not by way of an idle retort, but to expose the intrinsic difficulty of the subject, and to shut up the mouths of half-informed, superficial and self-sufficient scribblers and rebukers, on both sides the Atlantic. Would it not be wrong from the facts which we have stated to infer a plausible case of enormous fraud and corruption against English justice? If we were to try our hand at such a paragraph as Mr. Bristed has written and the Quarterly Review has cited against us, might we not say, "England is not a country for a man to recover his debts. All her merchants, who are debtors, are provided for, by what she calls her system of Bankruptcy, a stupendous system, which many of her most eminent lawyers have been honest enough to confess was productive of unmeasured fraud and injustice; and as to all the rest of her subjects who may owe anything, there is the insolvent debtor's court, where anybody may be discharged; and of this court it is enough to say, that during all its existence, although no man can be discharged without surrendering all his property, which the law says shall go to his creditors, yet in truth no creditor ever gets anything. How much the officers of the court get, we do not know; and what becomes of that part which they do not get, we do not know, but we do know that the creditor gets nothing." We forbear. It is hardly fit to write such paragraphs, even for the mere purpose of showing how easily they may be written. It is a dangerous curiosity to commit sins, only to learn or to show with what facility sins may be committed.

An act of the last session of Parliament was intended, we believe, to have continued the insolvent debtor's law to the present session. Owing to mistake, however, the purpose was not effected, and the law is supposed to have expired, and proceedings under it are for the present discontinued. The subject, however, is before Parliament, and it will give us unmixed pleasure if the English government shall be able to adopt such legislation on this equally important and difficult subject as shall satisfy the necessities of its own case, and afford light to the lawgivers of other countries. In the meantime let it not be understood, that the law of creditor and debtor is in a worse state for the creditor in this country than in others. As before observed, some of the states may have occasionally departed, and may still occasionally depart from the dictates of enlightened wisdom on this subject, from a disposition to relieve hardship, and from a vain and illusory hope of finding, in mere remedial legislation, a relief against the pressure of the times, and the stagnation of trade. But the general scope and tendency of our laws is to give creditors full and ample remedies, and to render property of all sorts liable for debts. We may say, indeed, that there is no country in the world, in which a regard for the rights of property is more likely to prevail; for in no country was property ever so equally diffused,

or was so great a portion of the numerical population interested directly in the laws which protect it. We look upon this so equal distribution of property, and to the regard paid to the rights of property in this country, as the great safeguards and security of the commonwealth. Almost every man among us is interested in preserving the state of things as it is; because almost every man possesses property, and while he cannot see what he might gain, he sees clearly what he might lose, by change. We think we may perceive here a fair ground of belief in the preservation of our republican forms of government. It is not less the language of reason than of experience, that property should have influence in the state, whenever such a state of things exists, as that military fame is not supreme. If the tendency of the laws and institutions of society be such, as that property accumulates in few hands, a real aristocracy, in effect, exists in the land. This is not a merely artificial, but a natural aristocracy; a concentration of political power and influence in few hands, in consequence of large masses of property having accumulated in such hands. There is not a more dangerous experiment than to place property in the hands of one class, and political power in those of another. Indeed such a state of things could not long exist. We have seen something like it in the ancient noblesse of France, in relation to whom the attempt seemed to be to make up, in positive power, or artificial distinction, what was wanting in the natural influence of property and character. The generality of these personages, with all their pretensions to rank, and all their blazoning of heraldry, were infinitely inferior in respectability, and in just influence in the state, to hundreds of the untitled but independent landholders of Great Britain. It will be disastrous, indeed, for this latter country, whenever a separation shall take place between the influence, the indirect, but the natural and salutary influence of property, and political influence, or political power. They would not, and as we have already observed, in the absence of direct, military despotism, cannot be long separated. If one changes hands, so will the other. If the property cannot retain the political power, the political power will draw after it the property. If orator Hunt and his fellow laborers should, by any means, obtain more political influence in the counties, towns, and boroughs of England, than the Marquis of Buckingham, Lord Stafford, Lord Fitzwilliam, and the other noblemen and gentlemen of great landed estates, these estates would inevitably change hands. At least so it seems to us; and therefore when Sir Francis Burdett, the Marquis of Tavistock, and other individuals of rank and fortune, propose to introduce into the government annual parliaments, and universal suffrage, we can hardly forbear inquiring whether they are ready to agree that property should be as equally divided as political power; and if not, how they expect to sever things, which to us appear to be intimately connected.

These speculations, however, are beside our present purpose. We mean only to say, that, in the present state of the world, wherever the people are not subject to military rule, the government must in a great measure be under the guidance of that aggregate of

indirect but salutary influences, of which *property* is an essential ingredient; along with other ingredients, doubtless, of intelligence, public spirit, and high and fair character. And that as in this country almost the whole people partake of the blessings of property, so must they also partake in the desire to protect property, and of course the laws which furnish that protection. The evils and difficulties which exist among us, in regard to insolvency, belong to the subject itself, and are not confined to our community. The highly commercial state of the world has elevated two subjects of legislation, in our day, to a very great degree of importance. One respects the prevention and punishment of those crimes which are committed on property, such as theft, forgery, &c. which have increased, in late times, far more than the more violent offences, such as murder, and assault, and the other crimes which spring from passion, revenge, or cruelty. The other respects the provisions necessary to be made relative to insolvents, and the proper degree in which there may be a mitigation, in certain cases, of the ancient rigor of imprisonment for debt. These important subjects are full of inherent difficulties. None of the ancient codes furnish examples which can be safely followed, because such a state of society as exists now existed in none of the ancient states. The systems adopted among the modern nations are not yet satisfactory to themselves. In France, we know that these subjects have lately attracted much consideration. In Holland, a revision of the whole system is before a commission appointed for that purpose. In England, one of these subjects, the reformation of the criminal code, is before a committee of the House of Commons, at the head of which is Sir James Macintosh. The bankrupt laws are, or lately have been, under investigation before another committee, and the insolvent debtor act is receiving great attention from some of the principal men in either House of Parliament. In our own country, we know that Congress has for two sessions discussed a proposed system of bankruptcy, and that several of the state legislatures are desirous, as far as their power extends, to make just and wise provisions on the subject of insolvency, in case the power of Congress to establish a bankrupt system shall not be exercised. Intelligent men, we trust, will thus see, that the law of *creditor and debtor* in the United States is not such as to cast that imputation on the character of our legislation, which Mr. Bristed's book would authorise, and which the Quarterly Reviewers would confirm and circulate. If our code be not *perfect*, neither is the code of any other nation perfect; and whatever ignorant or prejudiced men may write or may believe about us, those who have sense and candor will distinguish between what is inherent in a difficult subject, and what is the result of unskilful or dishonest legislation.

LETTER OF MR. WEBSTER,

ADDRESSED TO REV. LOUIS DWIGHT, SECRETARY OF THE PRISON DISCIPLINE SOCIETY, ON THE SUBJECT OF IMPRISONMENT FOR DEBT.

Washington, May 2, 1830.

Sir,—I have received your letter of the 19th of April, asking my opinion upon several questions, all relative to the subject of imprisonment for debt. I am quite willing to express my general opinions on that interesting subject, although they are not so matured as to be entitled to influence other men's judgments. The existing laws, I think, call loudly for revision and amendment. Your first four questions seek to know what I think of imprisonment for small sums. I am decidedly against it; I would carry the exemption to debts of thirty or forty dollars, at least. Individual instances of evil or hardship might, I am aware, follow from such a change; but I am persuaded the general result would be favorable, in a high degree, to industry, sobriety, and good morals, as well as to personal liberty.

You ask, in the next place, what I think of imprisonment for debt in any case where there is no evidence of fraud. Certainly I am of opinion that there should be no imprisonment for debt, where it appears that no fraud has been practised, or intended, either in contracting the debt or in omitting to pay it. But, then, it seems to me, that, when a man does not fulfil a lawful promise, he ought to show his inability, and to show also that his own conduct has been fair and honest. He ought not to be allowed merely *to say* he cannot pay, and then to call on the creditor to *prove* that his inability is pretended or fraudulent. He ought to show why he does not and cannot fulfil his contract, and to give reasonable evidence that he has not acted fraudulently; and, this being done, his person ought to be held no longer. In the first place, the creditor is entitled to the oath of his debtor, and, in the next place, to satisfactory explanation of any suspicious circumstances.

There are two sorts of fraud, either of which, when proved, ought to prevent a liberation of the person, viz: fraud in contracting the debt, and fraud in concealing, or making way with, the means of payment. And the usual provisions of the bankrupt act ought to be added, that no one should be discharged, who is proved to have lost money in any species of gaming; and I should include, in this class, *all adventurers in lotteries*. Having tendered his own oath, and made just explanation of any circumstances of suspicion, if there be such, and not having lost money by gaming, the debtor ought to be discharged at once; which answers another of your questions; for the detention of thirty days, before the oath can be taken, appears to me wholly useless.

You are pleased to ask whether, in my judgment, Christians can, with a good conscience, imprison, either other Christians, or infidels. He would be very little of a Christian, I think, who should make a difference, in such a case, and be willing to use a degree of severity towards Jew or Greek, which he would not use towards one of his own faith. Whether conscientious men can imprison anybody for

debt, whom they do not believe dishonest or fraudulent, is a question which every man, while the law allows such imprisonment, must decide for himself. In answer to your inquiry, whether I have found it necessary to use such coercion, in regard to debts of my own, I have to say, that I never imprisoned any man for my own debt, under any circumstances; nor have I, in five and twenty years' professional practice, ever recommended it to others, except in cases where there was manifest proof, or violent and unexplained suspicion, of intentional fraud.

Imprisonment for debt, my dear sir, as it is now practised, is, in my judgment, a great evil; and, it seems to me, an effectual remedy for the larger part of the evil is obvious. Nineteen twentieths of the whole of it would be relieved, in my opinion, if imprisonment for *small debts* were to be aboljshed. That object I believe to be attainable; and to its attainment, I think, the main attention of those who take an interest in the subject should be directed. Small credits are often given, on the confidence of being able to collect the debt by the terrors of the jail; great ones, seldom or never.

Three simple provisions would accomplish all, in my opinion, that may be considered as absolutely required to a just state of the law, respecting imprisonment for debt in Massachusetts.

1. That no imprisonment should be allowed, when the debts, exclusive of costs, did not amount to $30.

2. That there should be no necessity of imprisonment for thirty days, as preliminary to taking the poor debtor's oath; nor any longer detention than such as is necessary to give parties notice, and time to prepare for examination; and that a convenient number of magistrates, in every county, should, for the purpose of administering the oaths, be appointed by the government; and that such magistrates should be clothed with such further powers as might be thought expedient, in order to enable them to make a thorough investigation of the fairness or fraud of the debtor's conduct.

3. That in cases where the debtor had been discharged, if the creditor would make oath to newly discovered evidence, proving original fraud, or, to his belief, that the debtor had subsequently received property, and concealed or withheld the same from his creditors, it should be competent to such creditor to have investigation of such charge, and, if made out, to have execution against the person, and if not made out, that the creditor should pay the cost of the proceeding.

Other provisions might doubtless be useful; but if these three alone could be obtained, they would, in a great measure, clear the jails of debtors, and give general satisfaction, I have no doubt, to creditors.

I ought to add that the imprisonment of females in the common jails, for mere debt, is a barbarism which ought not to be tolerated. Instances of such imprisonment, though rare, do yet sometimes occur, under circumstances that shock every humane mind. In this respect, the law ought, in my judgment, to be altogether reformed.

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